

	<p align="center">Lease Enforcement September 2017 report Comments from Residents Consultation Committee (RCC members/House Group Committees) & Barbican Residential Committee Members - October 2017</p>
1	<p>I do not think it is possible to start any logical analysis of interpretation of the terms of the various matters addressed in the Lease Agreements from a position of partial acknowledgement of their content, since this is shaky ground indeed.</p> <p>Surely the CoL should start from a position of absolute compliance? This is particularly important given the strict manner in which compliance with short-term lets has been handled. It's not appropriate to deal differently with other clauses in the Lease agreements, and such a position would be hard to justify in any Court action.</p> <p>That a blind eye has been turned in the past both by residents and by the CoL to wooden floors is clearly unfortunate, but fault lies more with the residents involved who must clearly have understood they were violating their leases and were prepared to take the risk so generated. Since they have not informed the CoL of their intentions (in most cases I believe this is so?) I cannot see that any fault lies with the City.</p> <p>If the City gave permission to any individual Lessee, thus themselves violating the Lease agreements, that is a different matter - but that still does not mean that carpeting should not now be required throughout the Estate, as stated in the Leases.</p> <p>The lesson (this is like School!) is that rules are there to be obeyed.....!!!! A simple requirement to implement the Lease agreements in full will save a lot of trouble and confusion in the long-term, even if it generates some emotion during its implementation.</p>
2	<p>WOODEN FLOORS - It was thought that custom and practice was the BEO not enforcing carpets unless there were complaints from neighbours. It was also thought that many people had them installed for health reasons.</p> <p>The number of wooden floors in existence would make enforcement now very difficult. It's a fashion and will pass.</p> <p>KEEPING PETS - All were in favour of a ban on all pets. It being particularly inappropriate to have dogs. Much of the high walk is not washed by rain and is in danger of becoming smelly with dog's urine.</p>

	<p>SHORT LETS - All of the view that short lets (Air B & B in particular) should not be permitted: security and potential nuisance being the major reasons.</p>
3	<p>Comments from one House Group Committee</p> <p>It probably will not surprise you to learn that there are widely differing views on the issues raised in the paper. On the one hand, there is the view that the City should do its utmost to enforce the lease in the areas of pets, wooden flooring and short -term lets. Residents state that it was, in part, these lease provisions which attracted them to become long -lease holders on the Estate, and they dislike the onus being put on individuals to report on, and prove the impact of, someone else's breach.</p> <p>On the other hand, other residents argue that the City should maintain the status quo. They consider that the current arrangements work well and contribute to living in a concerned and cooperative community. These lease conditions should be regarded as a safeguard, and the guiding principle should be whether a nuisance has occurred. It is suggested that the current low level of oversight is appropriate and to do more would be expensive, over-intrusive and unnecessary.</p> <p>Some residents have also raised the planting of window boxes in the context of lease provision (e.g. although lack of planting cannot be classified as a nuisance, its enforcement would enhance the appearance of the Estate).</p> <p>Original comment from House Group Chairman prior to extension of consultation period.</p> <p>My first obvious point is that there should have been time to consult within the House on this issue - it directly affects all leaseholders and many would have had a view. This should be made clear to the Barbican Residential Committee, which may decide that there is scope to consult further.</p> <p>My own view is that I agree with much of what XXXXX has said and do not wish to repeat those points. However, we are where we are and I imagine it would now be very difficult for the Estate Office to require existing wooden floors to be covered and pets to be removed if they are causing no nuisance and no other resident has complained.</p> <p>What is needed above all is clear and consistent policies. If it is decided to take a "stronger" line on aspects of lease enforcement and that is made clear to existing and new leaseholders, residents would at least know where they stood and the volume of pets and wooden floors would gradually diminish.</p> <p>My final point is whether, if there were to be a review of lease enforcement, other aspects of the lease might need to be highlighted, e.g. the planting of</p>

window boxes. How much better the Estate would look if there were fewer empty ones.

Individual comment to House Group Committee.

I do appreciate that current BEO officers find themselves in a difficult position because of the deliberately ‘soft’, but also inconsistent, approach that has been taken in the past to lease enforcement re wooden floors and pets. As was said at the meeting, once enforcement becomes a matter of an individual officer’s personal judgement on whether or not a lease infringement is causing a nuisance, the whole system is undermined - and difficult to restore.

That said, I feel strongly that very many residents have signed up to the long leases with enthusiasm and with the intention of abiding by them. When we bought our flat one of the selling points for us was that there were clauses in the lease that offered clear protection against a range of potential nuisances - especially noise nuisance. People who live as closely together as we do here do need to be mindful of their impact on their neighbours – but sometimes this needs enforcement and it seemed to us excellent to have a system in place that guaranteed this.

The terms of the lease as regards various aspects of noise nuisance – and also pets - seemed to us to be eminently sensible. While some of the walls between flats are thick and provide good sound insulation, we all know that noise such as weekend drilling – or the pounding of tiny feet on a wood floor can reverberate through our rigid concrete structure up, down and across many floors. Re pets, while many may cause no significant problem, if the quiet ones are tacitly allowed the argument against people having ever more noisy or disruptive animals like dogs must become difficult to sustain.

Individual comment to House Group Committee.

It is a disappointment that enforcement has been let slip. I feel strongly that it should not be left up to individual leaseholders to take responsibility for bringing complaints against their neighbours simply to ensure that the legal provisions of Barbican leases are enforced by the BEO. This must inevitably lead to bad feeling – with the victim of the nuisance being put in a difficult and potentially unpleasant situation. While it is fine to ask a neighbour to turn down their television, reporting and requiring them to replace or cover expensively new flooring is on a different scale.

Individual comment to House Group Committee.

On all three areas: carpeting, no pets and no short-term letting I am in favour of the Corporation doing its utmost to enforce through the lease the obligations which we as long-term leaseholder have to the Corporation and which we

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	<p>(should) benefit from the Corporation in turn enforcing everyone to adhere to. In particular one of my reasons for choosing to purchase a flat in the Barbican was the quiet and beautiful environment which was partly the lack of pets (and I was specific about this as I moved from the Golden Lane Estate where small caged birds were allowed) and security given the framework for permissible sub-letting. As to carpets I was buying on the top-floor of Thomas More House, but I have always felt that in return for me remaining in compliance with my lease, the Corporation would enforce all the terms. What I dislike is for the onus on me to have to prove the impact on me of someone else's breach of the lease before the Corporation will act. It should be for the Corporation to ensure that the provisions in the lease are upheld, and thus meet their obligation to provide me with quiet enjoyment.</p> <p>Specifically as to AirBnB, it will be possible in some cases for the Corporation to request AirBnB to take a down a listing of a Barbican flat (once brought to the Corporation's attention) without visual inspection; photographs on the AirBnB site could contain features which are unequivocally from Barbican flats, so the suggestion this can only be done by visual checking from balconies is not correct.</p> <p>Individual comment to House Group Committee.</p> <p>I am in favour of retaining present prohibitions as, I suspect are most. My impression is that the great majority of residents obey the rules; a few don't. Thus I am not in favour of regular inspections which, in my view, would be expensive and over-intrusive. I am in favour of low-level regulation (i.e. In response to a complaint) which, I believe, is the present status quo.</p> <p>I know a number of House Members have contacted you individually but as I have also received/been copied into a number of comments I considered I should compile a House reply.</p>
4	<p>We agreed fully with the enforcement of lease terms and actions in respect of holiday lettings and pets.</p> <p>We feel that across Lauderdale Tower residents the issue of wooden flooring is more divisive. However, we all support the enforcement of conditions where inadequate flooring has been installed.</p>
5	<p>Why have terms in a lease if they are not to be followed? I note that even the Comptroller has not been able to give an opinion as to exceptions that can be made.</p> <p>Officers have been put in an invidious position since one Officer some years ago gave the go ahead for a resident to install a wooden floor.</p>

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	<p>Either abide the terms or insert where exceptions can be made on each of the sections under discussion.</p>
6	<p>Short Term Lets: For me this is straightforward - we should take a zero tolerance approach because of the disruption to residents and the insurance implications. Also it's illegal if this is happening for more than 90 days per year.</p> <p>Pets: consider on a case by case basis and allow as long as strictly no disruption to other residents occurs - if this happens insist the pet is removed. The reason I take this stance is some people particularly if they are elderly derive a great deal of benefit and pleasure from pet ownership and this need not cause a nuisance to other residents.</p> <p>Wooden floors: allow this as the only downside is if people are inconsiderate and clomp around in stiletto heeled shoes or drag chairs across floors causing noise disturbance in flats underneath. There are obvious health benefits over carpets particularly for people with serious dust allergies.</p> <p>I realise the legal experts may take a different view on the latter two but particularly with the wooden floors it appears that we have set a precedent anyway and I don't know what the implications would be if we instituted legal proceedings.</p>
7	<p>I think the short term let policy is working reasonably well. We still have a couple ads on AirBnB that extoll the convenience of picking up the keys from the car park attendants. But, in general, the efforts seem to be keeping this reasonably in check.</p> <p>The pet policy also seems to be working reasonably well. My understanding is that complaints lead to fairly robust action. We may want to be a bit stronger in our explanation to new residents but I don't think any substantial policy change is required.</p> <p>On wooden floors I believe we have missed the mark. If the tenant below complains that should be sufficient to require compliance with the no wooden floor policy. In my mind, this would not require removal of the wood floor but would require covering it with a carpet. I do not believe a resident who reports being disturbed by a wooden floor should have to prove disturbance. People who put in wooden floors did so with full knowledge they were not permitted and it is not unreasonable to require abatement of the nuisance caused.</p>
8	<p>This has been shared with the Speed House distribution list and the overall feedback I have received from residents is that the BEO should seek to enforce the terms of the lease.</p>

	<p>To provide a little more detail, let me turn to the three elements of the lease highlighted in the report.</p> <p>Firstly, residents felt most strongly that Short Term Lettings were inappropriate for the Barbican and that the lease should be enforced.</p> <p>Similarly, the enforcement of the 'no pets' clause in the lease was approved by a clear majority.</p> <p>Wooden floors proved to be the most contentious topic. Half the respondents were in favour of enforcement, some were against enforcement, and some considered that a well-installed modern wooden floor could be as good as carpet in terms of sound-proofing. However, residents in the latter group felt that if wooden floors are to be permitted the BEO must set standards for high-quality sound insulation that residents must follow so that their neighbours are not affected by noise - over and above that from carpet plus underlay - once the wooden floor is laid. Without such standards there was a clear preference for enforcement of the carpets-only (excepting kitchen and bathroom per the report) clause.</p> <p>For the avoidance of doubt, I would highlight that just 9% of Speed House residents responded to the survey - despite an email to those on my list and a hard copy note to those who are not.</p> <p>As such, this response rate is on the low side for unsolicited surveys (usually 10-15%) ... but I hope that combined with feedback from other house groups across the estate it will be helpful.</p> <p>If the response rates across the estate remain poor, perhaps a 'survey monkey' survey from the BEO might solicit more feedback if that has proved to be successful in the past.</p>
9	<p>We find that there are differing views within the committee regarding the lease enforcement proposals. Some committee members support strict enforcement of the lease conditions regarding wooden floors and regarding pets ('rules are rules'); others favour a more tolerant enforcement of these conditions ('enforce only if there are complaints').</p> <p>Nevertheless we find two points on which all committee members agree:</p> <ul style="list-style-type: none"> - we are all in favour of strict enforcement of conditions that involve safety and security (particularly those conditions prohibiting short term leases); - we are all worried that a rigorous enforcement policy would lead to significant enforcement costs that we foresee being passed on to residents.

	<p>We have not canvassed opinion across Gilbert House but we are certain that there will be a divergence of views there as well, and we believe that it will be difficult for us as a committee to represent in a simple manner the full range of views held by all our residents. We believe that this issue is likely to be highly controversial and divisive, and we recommend that the City therefore proceeds cautiously, seeking the fullest possible range of opinions.</p>
10	<p>It is unfortunate that the lease has been variably enforced over the years. In general it is not a desirable position that people do not know whether a lease provision applies or not.</p> <p>We therefore welcome the move by the BEO to get some clarity on the position.</p> <p>In general Seddon House Group thinks that the provisions of the lease should be enforced. However, the nature of that enforcement matters, and we make some distinctions below.</p> <ul style="list-style-type: none"> - We say this because leaseholders and prospective leaseholders need clarity about what they can and cannot to. - Also, many leaseholders will have bought their flat in the knowledge that their desire for a flat in the Barbican needed to be traded off against something else they might also have liked but is forbidden in the lease (e.g. having a pet or a stone floor). They made an explicit decision on that trade off. Those who have thus followed the rules are disadvantaged if those rules are not enforced. <p>Type of enforcement</p> <p>In saying that we believe the provisions of the lease should be enforced, we do not believe that means that estate officers should go round inspecting flats seeking out breaches of the lease. Instead the issue of enforcement should arise when breaches are drawn to their attention (with one exception – see below), nearly always because the breach is causing a nuisance to neighbours or breaching the integrity of the estate.</p> <p>If a complaint is made about a breach of the lease – because it is causing a nuisance or breaching the integrity of the estate - we do not think the onus should be on the complainant to prove the nuisance; the onus should be on the breacher to prove that their breach is not causing a nuisance.</p>

Specific instances

The above policy of the BEO not doing inspections or taking other action to detect breaches means that some breaches that are invisible (e.g. internal decorations not being done every 7 years) are not likely to be commented on. On the other hand, should a flat become so dilapidated through lack of decoration that it becomes obvious, then the breach can be acted upon and redecoration required.

Other breaches may or are likely to impact on neighbours and the BEO should be ready to enforce the lease if they do so impact.

Thus Seddon House Group supports the action taken by the City to enforce prohibition on *AirBNB lets*.

Indeed, in this single instance it would support the BEO being proactive in detecting such breaches

It supports the prohibition on *animals and birds*.

Wooden floors are trickier because of the large number that have been installed. Giving an amnesty to those that have been installed but forbidding any new ones seems unfair. The reason that the lease requires carpets with thick underlay is to prevent that transmission of noise to neighbouring flats. So what is important is to maintain that requirement that noise should not be transmitted.

Clearly the lease can't be altered, but the BEO could perhaps consider developing a specification for wooden flooring that would ensure that there is no noise transmission. Leaseholders and prospective leaseholders could then be told that the lease requires flats to be carpeted, but there is an approved specification for wooden flooring that will ensure sound proofing to carpeted standards and if the leaseholder wants wooden floors they must use that specification.

If a neighbour complains about wooden floors, the neighbour should not have to go to great lengths to prove the nuisance. Instead the leaseholder should prove that their wooden floor is not causing a nuisance – showing that they used the approved specification could be part of that proof.

	<p>Other actions</p> <p>We suggest that conveyancing solicitors, new long leaseholders, and registered subtenants should be sent a letter reminding them of the lease conditions – notably, no AirBNB, no pet, and carpeted floors. We realise that the provisions are of course in the lease itself, but we are suggesting a letter in plain English would help reinforce the point.</p> <p>We would also like the BEO to enforce the requirement that long leaseholders register their subtenants – otherwise they can cause the same type of problems as AirBNB renters because they do not know routine housekeeping practices in the Barbican.</p>