Nevern Square Garden – New ownership proposals

This document sets out proposals for the ownership of the communal garden in Nevern Square, and proposes a new ownership structure. It is therefore relevant to all those who own shares in Nevern Square Garden Limited, and all those who pay an annual precept for the maintenance of the garden in Nevern Square through their council tax.

1. **BACKGROUND**

1.1 The freehold of the garden in Nevern Square was acquired by Nevern Square Garden Limited ("the Company") in May 1975, and the Company continues to hold the legal title which is registered at the Land Registry under title number LN180914. The Company had been incorporated shortly before, in April 1975, with the express purpose of holding the freehold of the garden and of managing the garden for the residents. At the time, the Company raised funds of £3,500.00 (which presumably was to cover the purchase cost) from 35 residents who each subscribed £100.00. Those subscribers were each then given a debenture over the Company of £100.00 which remain in place to this day. The articles of the Company envisage that additional people could become members of the Company, and these would be termed "B" members, whose membership would be on an annual basis, renewable each year. For the first two years, it appears the Company operated on this basis.

1.2 Subsequently, in October 1977, the garden was adopted, at the application of the residents, by the Royal Borough of Kensington and Chelsea under the provisions of the Kensington Improvement Act 1851 ("the Act"). The Act provides for control over the garden to be handed to a garden committee (“the Committee”), and for funds for the maintenance of the garden to be collected from residents by way of a precept on the council tax (originally the rates). This scheme has operated since 1977 and continues to operate on a satisfactory basis.

2. **THE PROBLEM**

As can be seen from the above, there are currently two legal regimes in place, the ownership of the garden by the Company, and its management operated by the Committee. The difficulty is that the two regimes do not sit well together. In practice, the maintenance of the garden is carried out by the Company, and not the Committee, although the council is required under the Act to pay the garden maintenance funds to the Committee, and not to the Company. Due to the passage of time, the Company does not now know the whereabouts of most of the original 35 debenture holders; and in practice, there are now no "B" members of the Company. There are two classes of users of the garden: those entitled to use it under the provisions of the Act (i.e., those who live in the square); and those who live outside the square, who are

permitted to use it under an annual licence. None of this fits with the original scheme set up when the company was formed.

3. **THE PROPOSAL**

3.1 It is therefore proposed that the arrangements should be regularised, and the anachronisms should be removed. This can be done by liquidating the Company and transferring its asset (the garden) to trustees who will hold it for the residents under the terms of a new declaration of trust. At the same time, the Company would redeem the debentures, and then transfer any balance of funds held to the Committee. Where debenture holders cannot be found, a separate fund would be retained in order to pay them if and when they come forward.

3.2 Following completion of these arrangements the garden will be maintained by the Committee in accordance with the Act, and the nominated trustees will hold the freehold of the garden for the benefit of the residents. The Committee would have the power to nominate new trustees, and the trustees would be prohibited from selling the garden, or otherwise disposing of it. This arrangement will then mirror many other gardens in the royal borough which operate on that basis.

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November 2022

RSB/57408.99990