

**Minutes of the
Fernwood Central Residents' Association (FCRA) Committee Meeting
Held at 19:15 hrs on Tuesday 7th January 2025
Fernwood Village Hall**

1. Attendance:

Present		Apologies
John Newton (JN)	Henry Micah (HM)	Brenda Wright (BW)
Barry Smith (BS)	Terry McSwiney (TM)	
David Heath (DH)	Nick Roberts (NR)	AR = A Resident

Members of the public were in attendance.

2. Rentcharge on properties within Central Fernwood and the wording of the Deed of Variation

DH explained that the most recent meeting with FirstPort and Barratts had resulted in a meeting being scheduled to be arranged between the legal departments of Barratts and FirstPort early in the New Year at which the DoV would be discussed. It had therefore seemed opportune to submit a statement from FCRA on the potentially improved wording as well as other associated issues, hence the need for this special Committee Meeting.

DH also explained that Paragraph 9.2 in the TP1 may have been read as detrimental to the Freeholder but in fact actually referred to Sections 121 of the Law of Property Act 1925 and protected the mortgage provider.

BS explained that when talking about a rent charge we need to understand that although our TP 1 says fixed and variable rentcharge, what it is identifying is estate rentcharge (covering the cost of shared things). In our case the public open spaces.

The concern being that if someone defaults on their covenant obligation to pay their Service Charge (Estate Rentcharge), section 121 of the Law of Property Act 1925, called statutory remedies, can be implemented by the rent charge owner/rentholder (Firstport). This includes exercising rights of re-entry as specified in the Act.

Under section 121(3) of the 1925 Act, the rentholder may take possession of the charged land and the income from it until the rent and all arrears, together with all costs and expenses caused by non-payment of the rent, are fully paid.

Under section 121(4) of the 1925 Act, the rentholder may grant a lease of the charged land to trustees, who must try to raise enough to pay the rent and arrears, together with all costs and expenses caused by non-payment of the rent. Any surplus must be paid to the owner of the charged land. Such leases are known as rentcharge leases. Such a lease may make the house unsaleable

TM explained the research that she had undertaken and provided copies of correspondence with her solicitor that contained a recent revision to paragraph 9.2 of the TP1. After discussion, it was agreed that the new wording added 2 months notice prior to any action and also agreed to accept payment of rentcharge arrears AND agrees to surrender the lease once full payment has been made. In which

case it was considered that the new standard wording was the best that could be hoped for in the circumstances.

It was then agreed that the new standard paragraph 9.2 wording be provided to Talents Solicitors who would be asked if this wording would satisfy the majority of lenders that they had dealt with. It would also be passed to AO as the Barratts representative. The new standard paragraph 9.2 wording is attached as Appendix 1 to these minutes.

It was also agreed that FirstPort and Barratts be notified of the view that the benchmark fee for the Deed of Variation was not valid as it compared a one-off individually crafted Deed of Variation to the application of a standard worded document for more than the 800 applicable Freeholders on Fernwood. It was therefore stated that as the actual cost was minimal, it should be covered by the Management Fee which was viewed as excessive in comparison to the actual management provided.

DATE OF FUTURE MEETINGS

Committee Meeting - Wednesday 29th January 2025 at 7:15pm – Village Hall
Committee Meeting - Wednesday 26th February 2025 at 7:15pm – Village Hall
Committee Meeting - Wednesday 26th March 2025 at 7:15pm – Village Hall

Meeting Closed 20:30 hrs

Appendix 1

Deed of Variation New Standard Wording

Clause 9.2 of the Transfer shall be deleted and replaced with the following clause:

9.2.1 Prior to exercising its rights of re-entry pursuant to section 121 Law of Property Act 1925, the Manager will first serve on any mortgagee:

a notice not less than 2 months prior to seeking to rely on the grounds for recovery of rentcharge arrears described in Sections 121 (3) and (4) of the Law of Property Act 1925; and

in the event that any such rentcharge arrears have not been paid in full, a further notice at the end of the said 2 month period notifying any mortgagee of the Manager's intention to take further action.

9.2.2 The Manager agrees to accept payment of rentcharge arrears and any associated reasonably incurred legal costs from the mortgagee if offered on behalf of the Transferee or its successors in title

9.2.3 Following settlement of such rentcharge arrears and any associated legal costs, the Manager agrees to surrender any lease granted pursuant to Section 121(4) of the Law of Property Act 1925 without a premium.

For the purposes of this clause the expression "any mortgagee" shall be limited to the proprietors of any mortgage charges that may for the time being be registered as a first legal charge at HM Land Registry against the Transferee's title"

1.2 The following amendment should be and is hereby made to the Transfer and such amendment

together with the Transfer shall at all times be read and construed so that the words following "Solicitors" in Paragraph 6 of Part B of the Third Schedule are replaced with the following words:

"in the contemplation of or incidental to, together with the costs of, the enforcement of the payment of any moneys lawfully payable under the terms of this Transfer"