

Alterations to a commonhold unit which would lead to an increase in its size (for example the addition of a storey into the airspace above a unit) would constitute a trespass, and could not therefore be carried out by the unit-holder without the consent of the commonhold association. Although this point seems trite, it has been responsible for a great deal of litigation in Commonwealth and other jurisdictions: see for example *Proprietors of Strata Plan No 1627 v Schultz* (1978) (Digest); *Strauss v Oyster River Condominium Trust* (1994) (Digest); *Gaffny v Reid* (1993) (Digest).

In some of these cases (*Strauss*, *Gaffny*), a prominent theme which emerges is the extent to which the strata title proprietor has been the author of the misfortune by turning a blind eye to that which it then seeks to have removed. This underlines the need for the commonhold association to be consistent in its application of the rules.

4.10.2 The standard commonhold community statement rules

The current (August 2003) version of the commonhold community statement contains two rules regarding alterations. Confusingly, one is found under the heading 'Use', while the other is found under 'repair and maintenance':

12. A unit-holder must not make any alterations to the common parts.

...

22. The commonhold association must not alter the common parts unless a resolution is passed by the commonhold association.

There is no restriction upon alterations by unit-holders to individual units, although commonhold associations may wish to introduce their own restrictions, bearing in mind the factors discussed in paragraph 4.10.3 below.

4.10.3 Possible restrictions on alterations to units

The extent to which alterations to units should be restricted by an appropriate rule in the commonhold community statement is something which individual commonhold associations should consider. The following factors may assist in that determination:

(a) Where uniformity is important, for aesthetic or other reasons, there may be much to be said for a blanket prohibition on alterations to a unit, or at any rate those which affect the external appearance of the unit. This principle has informed a number of the overseas cases: see, for example, *Proprietors of Strata Plan No 464 v Oborn* (1975) (Digest) (injunction granted for replacement of window frames unlawfully altered); *Piccadilly Place Condominium Association, Inc v Frantz* (1994) (Digest) (erection of burglar bars held not to infringe prohibition); *Monday Villas Property Owners Association v Barbe* (1997) (Digest) (injunction granted for removal of prohibited radio antennas).

(b) Where peace and quiet are important (for example in a sheltered housing development), then again a blanket prohibition may be appropriate.

(c) Where units are structurally interdependent (as in the case of a block of flats), any alterations that affect the structure should be forbidden, at any rate without the consent of the commonhold association. Alternatively, the unit may be defined in such a way as to exclude the structure and exterior.

4.10.4 A possible solution

One possible compromise between complete freedom to alter units and a blanket ban on alterations would be a requirement for the unit-holder to seek the consent of the directors to any proposed alteration to a unit. This compromise informed the drafting of the original (October 2002) draft of the commonhold community statement:

27. Any alterations to the structure or external appearance of a Commonhold Unit may only be made with the written consent of the Board of Directors, and subject to the provisions of sections 23 and 24 of the Act (if applicable).

This draft will be a good starting point for most prospective commonhold associations. It will not go far enough for those wishing to prohibit any work at all (see (b) in paragraph 4.10.3 above), and it will be too prescriptive for some of those living in a spread out development. It may also lead to resentment if uneven treatment is permitted with changing membership of the association, as some of the Commonwealth cases illustrate (see, for example, *Strauss*, *Gaffny* cited in paragraph 4.10.1 above).

4.11 INSURANCE

4.11.1 Introduction

Sections 14(2) and 26(b) of the Act require the commonhold community statement to make provision regulating respectively the insurance of the commonhold units and the common parts. The relevant provisions of the commonhold community statement dealing with insurance are rules 16 to 19.

As with the case of repair and maintenance, the Government's preoccupation with striving to ensure that the unit-holder should be treated like a freeholder gave rise to a dilemma: how far can or should the unit-holder be trusted to arrange matters himself? As the Opposition spokesman said during the course of the Report Stage:

My concern is that commonhold associations will enter into many different types of agreement and that there will be no consistency. As a result, what should be insured by the commonhold association for the integrity of the whole of the unit-holders may be insured by