
Important clarification regarding the gardens

From Grosvenor and Lansdowne Gardens Committee <glcgardenscommittee@gmail.com>

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Important message from the: Official Grosvenor & Lansdowne Crescents Gardens Committee

Dear Proprietor,

We are writing to provide an important clarification following recent communications circulated by the group of individuals describing itself as the "elected committee", including the Davidson Chalmers Stewart letter recently sent to proprietors.

We do not intend to respond to every allegation or assertion by circular email. That would not assist proprietors and would risk escalating matters unnecessarily. However, there is one central point which must be corrected, because it goes to the heart of the present dispute.

The Davidson Chalmers Stewart letter proceeds on the basis that the gardens are common property owned by the proprietors. On that footing, it suggests that proprietors are free to adopt new arrangements for the management of the gardens by constitution, committee process or majority vote.

That premise is wrong.

The proprietors do not own the garden ground — a fact confirmed by the title deeds and Flexlaw. Proprietors' rights arise from their individual title deeds. Those rights are property rights attached to the properties in Grosvenor Crescent and Lansdowne Crescent. As a matter of law, they cannot be altered, reduced, transferred, overridden or reorganised simply by adopting a constitution or by majority vote.

The Davidson Chalmers Stewart letter therefore starts from the wrong premise. Its conclusions are built on the assumption that the gardens are common property owned by the proprietors. They are not. Once that error is corrected, the analysis changes fundamentally. A committee or group of proprietors cannot, by constitution or vote, assume powers over title-based rights which the title deeds do not give them.

This is why Flexlaw advised proprietors that the actions taken by the group describing itself as the "elected committee" have created a title dispute. Counsel has supported that advice.

It is important to be clear that this issue did not arise without warning.

When the proposed constitution was circulated, detailed written objections were sent to its promoters explaining that the proposal was legally incompetent. The objections made clear that the constitution was in breach of the title deeds and would create competing claims of authority over the gardens, putting proprietors' title rights into dispute.

Those objections were not minor drafting comments. They explained that the proposal was unlawful, that those promoting it had no lawful authority to advance it, and that proceeding would create a title dispute.

Those promoting the constitution therefore knew, before they proceeded, what the legal consequences of their actions would be. They proceeded regardless.

The title dispute confirmed by Flexlaw and supported by Counsel was the foreseeable consequence of doing so.

Under Scots law, those who knowingly act without lawful authority and cause loss or expense to others may incur personal liability for the consequences. That liability is not avoided simply because the offending constitution is later withdrawn, or because those responsible later assert that no dispute exists.

The reason is straightforward. The issue is not merely what the constitution said. It is that the group proceeded to claim authority over the gardens when they had been warned they had no lawful authority to do so.

That has created the present dispute. If it cannot be resolved by agreement, the issues of authority, enforcement and liability will have to be determined by the court.

The group's reassurance that no title dispute exists should therefore be treated with caution. It rests on a false premise and cannot be relied upon.

The Official Committee's responsibility remains the practical management, maintenance and protection of the gardens for the benefit of those entitled to use them. It cannot accept arrangements which compromise proprietors' title rights, create competing claims of authority, or interfere with the proper administration of the gardens.

We will keep proprietors informed of material developments. In the meantime, the Official Committee remains focused on restoring clarity, protecting proprietors' rights, and ensuring that the gardens continue to be maintained for the benefit of all those entitled to use and enjoy them.

Yours sincerely,

Official Gardens Committee