

Registers Update - Exclusive Garden Ground in Tenement Properties



The Keeper has encountered an increasing number of cases where an applicant for first registration is uncertain what to do where the subjects sought to be registered are a tenement flat which has, as a pertinent, exclusive garden ground.

UPDATE: 04

The problem arises where that exclusive ground has only ever been described verbally in the prior titles. Some guidance regarding the Keeper's requirements is clearly called for to avoid additional expense being incurred when it is not necessary.

There have been suggestions that in all cases the deed inducing registration has to have a plan annexed to it showing the location and extent of that exclusive ground within the tenement steading. This, however, is not necessarily the case. There may well be cases where it is possible to continue relying upon the verbal description and in other cases supplying a plan might not be enough.

If you have the latter kind of description and your client wants the exclusive garden ground defined on the Title Plan then you will certainly need a plan of it, but that will not be enough. Because of the peculiar nature of tenement properties, and the capacity for dispute which exists between flat owners, the Keeper will require something more. Two choices exist:

In considering relying on the verbal description two scenarios exist:

- If the verbal description is adequate to allow somebody on the ground to identify the location within the red edge on the Title Plan, no problem exists. A verbal description can simply be included in the Title Sheet without any exclusion of indemnity. An example might be the situation where a ground floor flat has the exclusive right to the garden ground ex adverso the flat lying between the front building line of the tenement and the road;
- If, however, the verbal description is too vague and merely locates the ground somewhere within the tenement steading the only way the verbal description could be used by the Keeper would be under an exclusion of indemnity as regards location and extent.

- The plan can be accompanied by Affidavits from all the proprietors of the flat to which the exclusive ground pertains covering the prescriptive period to the effect that they have possessed that area openly, peaceably and without judicial interruption as the exclusive garden ground referred to in the deeds;
- Alternatively, Letters of Consent from the proprietors of all other properties which have rights effering to the area within which the exclusive ground is said to lie agreeing that the ground in question does belong to the proprietor who is claiming it.

If neither of those pieces of evidence can be produced the Keeper could only show the exclusive garden ground on the Title Plan under exclusion of indemnity. Naturally the running of prescription thereafter would lead to the removal of that exclusion.



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