



PHOTO COURTESY OF WESTBROOK

US giant Westbrook is trying to use enfranchisement laws to gain control of the freehold of Pimlico's famous Dolphin Square. Christian Metcalfe assesses its chances this time round

SQUARING UP

There is a locked ground-floor room, somewhere behind the fortress-like, red-brick facade of Dolphin Square in Pimlico, SW1. In it, several rustic tables have been laid out, upon which sit piles of documents – documents that are essential to the success of a carefully planned battle for control.

But this isn't a scene from the 1940s, when the Square acted as a base for the Free French plotting their march on Paris. It is merely the scene of the Square's long leaseholder, readying itself to go into battle for a second time with its freeholder.

The holder of the battle plan is US private equity group Westbrook Partners, which has just launched a renewed attack intended to pry the massive central London residential block from the grip of British life assurance company Friends Provident.

But why try again when the first round of the bout ended in February last year with Westbrook making a hasty retreat from a battle in the high court, just a week before it was scheduled to begin?

That first attempt began in October 2007 when, using the provisions of leasehold legislation (see box, p77), Westbrook served a notice of its right to collective enfranchisement on Friends Provident.

Enfranchisement at Dolphin Square had looked impossible, because its 1,250 residents' leases were too short to qualify

– less than 20 years – and as Westbrook was the headlessee and therefore owned more than three flats, it was unable to use enfranchisement laws. But, not to be deterred, Westbrook assembled the cream of London's enfranchisement community and, according to Westbrook adviser Robert Or-Ewing, a partner in Knight Frank's leasehold reform team, "endless Q&A".

It then decided to take advantage of the oddity that Dolphin Square has always been let entirely on short- and medium-term tenancies and never on long leases.

So, with the help of all its experts, Westbrook created 622 Jersey-listed companies and sold each of them one or two of the 1,250 flats in Dolphin Square on 26-year leases, thereby allowing it to serve notice of its right to collective enfranchisement on its freeholder.

However, the Jersey-based mechanism used by Westbrook and its office of 297,5th did not go down well with Friends Provident. The company served a counter-notice against the US investor, claiming that the scheme was a sham and an abuse of process.

The war of words between the two parties continued for almost two years, with whopping fees and costs (Friends Provident claimed the dispute was causing it to lose £13,000 a day) mounting up.

It was all due to come to a head in February 2009 but, just a week before the case was due its day in court, Westbrook

WESTBROOK'S DOLPHIN HUNT

Westbrook bought the 27-year headlease for Dolphin Square from Westminster city council for £19.9m in 2005. The sale came after years of failed bids by the council to rid itself of its interest, and was hailed by Westminster leader Sir Simon Milton as a win-win situation, but criticised by residents as another "Darnley Shirley Porter"-type scandal. Westbrook immediately

began a £20m refurbishment of the block to upgrade the 1,250 flats and began paying off the Square's subsidised tenants at a total cost of £24m. The group said that it just wanted to increase rental income and had no designs on Friends Provident's territory. However, things changed two years later when the first attempt to enfranchise was made.

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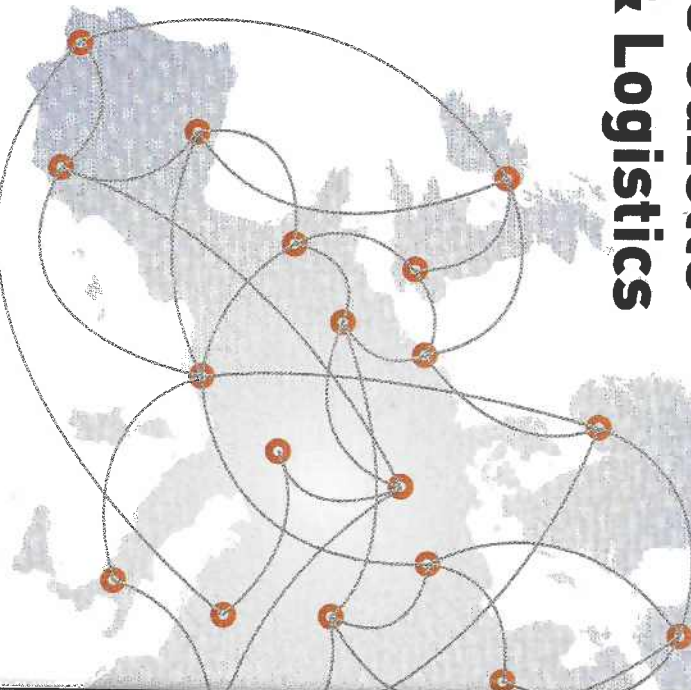


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pullled out, citing "unfavourable market conditions".

All was quiet until last week, when *Essex Gazette* revealed that Westbrook had dashed off its boxing gloves and was looking for a rematch (11 September, p45).

But is the outcome likely to be different this time around? And will the case even make it to court?

A writ filed at the Central London County Court last month reveals that Westbrook began its fresh fight for Dolphin Square in May, when it served a collective leasehold enfranchisement notice on Friends Provident, this time offering the firm £1116m for the freehold interest.

Although this was 12% more than Westbrook offered when it made its first move on the freehold in 2007, the figure is well below the estimated £300m price at which the US private equity firm sold the

DOLPHIN FRIENDLY? WHAT WILL HAPPEN TO THE SQUARE'S RESIDENTS?

Despite the long history of eccentric, rich, famous, dangerous and scandalous residents at Dolphin Square, today's inhabitants are surprisingly reticent to speak about the looming legal battle. Those who will talk do so on a purely unattributed basis and seem divided on what they can expect from enfranchisement.

One resident said of Westbrook: "No doubt they are smart cookies, and as smart

cookies one would presume that they know what they are doing. I can't see that enfranchisement would have an adverse effect on tenants. Tenants have been led to believe that their leases will hold good and will still be secure with a different landlord."

Others were keen for Friends Provident to remain as freeholder. Leasehold enfranchisement principles of English law, it is not wrong to order and structure your affairs so as to achieve a specific legal result."

Enfranchisement bout. Lacey adds that Friends Provident is still pursuing its costs after the last case was withdrawn, "so it was much to our surprise when they served enfranchisement proceedings a couple of months ago".

Opinion seems to be evenly divided over who will be the victor if the battle does make it to court this time.

John Stephenson, senior partner and head of the residential and leasehold reform group at law firm Bircham Dyson Bell, believes Westbrook is taking a valid route to force the sale of the Dolphin Square freehold.

He says: "If none of these Jersey companies are associated, no single company holds more than two leases of flats, and the leases are for a term of more than 21 years, on the face of it they qualify for enfranchisement and do not fall foul of the associated company exclusion."

"As a matter of the general requirement for a flat to be occupied by the leaseholder to qualify for enfranchisement was abolished.

But the seemingly unintended consequence has been that enfranchisement now applies to empty and largely commercial buildings, even if nobody recently lived there, and can even extend to buildings exclusively used for business purposes.

The freeholder will "fight tooth and nail" in round two of the enfranchisement bout

According to Simon Lacey, head of central London residential and commercial at P&C Investments, which manages Friends Provident's funds, Westbrook's attempts to gain control are likely to be just as strongly defended as they were in 2007-09.

He says that the freeholder will "fight tooth and nail" in "round two" of the

"So it would be an anomalous and surprising outcome if an investment company, holding the bulk of what is reputedly the largest residential block in Western Europe, has managed to find a bulletproof way of enfranchising a collective enfranchisement in order to compulsorily acquire

can't the claim will fail?" Lacey has promised that no matter who wins the first battle over whether Westbrook is entitled to enfranchise, there will be an appeal, and even if Westbrook wins that, the matter will still have to go to the Leasehold Valuation Tribunal and then to the Lands Tribunal – a process that takes years. Stephenson agrees: "If Lacey will get at least to the Court of Appeal as there is a huge amount of money involved."

BUYING A BLOCK: HOW THE ENFRANCHISEMENT LAWS WORK IN PRACTICE

Enfranchisement laws are designed to free leaseholders from the shackles of freehold. Under the rules, the owners of leases of more than 21 years have the right to buy their property's freehold, subject to no one leaseholder owning more than two flats.

In 2002, the former

It seems that similar sentiments may still apply to the site today. Westbrook failed to respond to enquiries.