

Brentford Dock: Interpretations of our Leases

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Contributions from people other than the author, where inserted into the main text, are appended with a source identifier in the form of the contributor's initials and date in reverse notation all in round brackets. For example, (ADW20020831)

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1: Purpose

This document sets out some of what is in the leases of properties on Brentford Dock, in plain English. Much of the lease is already in plain English. However the lease is not always easy to understand because of complex cross-referencing and lengthy and legalistic rehearsal of much that is commonplace. One aim of this document is to clarify the meaning of some terms and improve understanding amongst leaseholders.

Following the Definition of Terms, is a section highlighting some differences between the old 99 year leases and the new 999 year leases

The Brentford Dock Handbook circulated in July by Brentford Dock Limited offers a simplified interpretation of parts of the lease. This interpretation contains some potentially misleading statements about the service charges, which are identified in another section.

A close reading of the lease raises a number of questions about the status of some of the services, property usages and staff functions. Some of these questions probably have clear legal answers. Others may serve to stimulate debate and common understanding. These questions are listed near the end of this document, together with some moot and entirely disputable beginnings of possible answers. Discuss and enjoy!

Finally I shall include feedback from lessees and any responses from BDL which my correspondence on these matters may elicit.

2: Caveat and Disclaimer

I have done my best to ensure the correctness of all statements made in what follows. However I am not a lawyer and I have not taken any legal advice. I have seen only a limited number of leases. Your own lease may differ from those I have seen.

I accept no responsibility for any costs you may incur as a result of any action you may undertake consequent on your reading of this document.

3: Promise and undertaking

I do undertake to use my best endeavours to correct any mistakes I may have made in what follows and to maintain an up-to-date version of the document available in electronic form either on the Residents web-site, or by email circulation on request.

I welcome your feedback and suggestions for improvement. I welcome identification of errors and mistakes. I welcome submissions of additional material covering areas of the lease not already included. I very much welcome contributions to a debate on any of the questions I have raised.

I will do my best to answer individual requests for clarification and incorporate any substantive points that may arise within the main text. I will try to facilitate debate on the questions I raise, through the Forum on the Residents' web-site or by other means. Please email me at amwarren@freeuk.com

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4: The Leases

There are two main types of lease. First the original 99 year leases granted by the Greater London Council. I shall call these the GLC Leases. Second, the new 999 year leases granted by Brentford Dock Ltd. I shall call these the BDL leases.

5: Some Definitions

GLC leases and BDL leases both contain a list of definitions of terms, many of which refer to other clauses in the lease. Those clauses may then refer to other schedules and/or annexes. Here are summaries of the actual words behind the definitions when you eventually find them. The list far from exhaustive. Italics means you can find further definitions elsewhere in this document. References to clauses in the leases are given with each summary.

Additional Expenditure

- The cost of providing the *Additional Services*.
- The costs of insuring the garages, parking spaces, and baggage stores. These are explicitly excluded from the *Estate Expenditure*.

GLC Lease: definition in 4.3 refers to definition in Schedule 6 part 2

BDL Lease: definition in 4.3 refers to definition in Schedule 6 part 2.

In my draft BDL lease this is actually Schedule 6 part 3.

See also in the **questions** section.

Additional Services

The Additional Services are as follows:

- Maintaining garages, parking spaces and baggage stores
- External Decoration, renewal etc of garages and baggage stores.
- Maintenance of any existing electrical supply to such garages and baggage stores.

BDL Lease: clause 5

GLC Lease: clause 5

Aggregate Service Charge

Amount of the *Aggregate Service Charge* is your proportion of *Estate Expenditure*, *Block Expenditure* and *Additional Expenditure*.

Your actual quarterly service charge demand is a demand for advance payment on account for services being delivered during the current year. This amount is determined by the Lessor and must be paid.

The *Aggregate Service Charge* is the actual cost of delivering the services during the relevant (i.e., previous) *financial year* and not the budgeted amount. The *Aggregate Service Charge* is certified by the

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Accountant who must be satisfied that all costs have been correctly allocated under the various categories.

BDL Lease: clause 4.1 through 4.11

GLC Lease: clause 4.1 through 4.11

Block Expenditure

Under the GLC leases but not the BDL leases *Block Expenditure* is further subdivided into Main and Internal Block Expenditure. This distinction has never been of any material importance and no further mention of it will be made here. Both main and internal Block Expenditure is described here without distinction

Block Expenditure is the cost of providing and maintaining the *Block Services* for the *Relevant Block*, plus the specific inclusion of the cost of lift insurance in the *Relevant Block*.

BDL Lease: clause 4.3 refers Schedule 6 Part ?, refers clause 5.1.1.d.1

GLC Lease: clause 4.3 refers Schedule 6 Part ?, refers clause 5.1.IV

(Part no is ? because this varies between documents, depending on how many parts the Block charges take up and where they are located. Which part is relevant is obvious in any particular case).

Block Services

Under the GLC leases but not the BDL leases *Block Services* are further subdivided into Main and Internal Block Services. This distinction has never been of any material importance and no further mention of it will be made here. Both main and internal Block services are described here without distinction.

The *Block Services* are as follows:

- Building maintenance and renewal including lifts, entrances, walkways passage and landings, and rubbish removal
- Cleaning and lighting.
- Decoration of the building and common parts
- Maintaining forecourts and access ways that exclusively serve the *Relevant Block*.
- Cultivating garden areas that exclusively serve the *Relevant Block*.

BDL Lease: definitions not yet seen by this author.

GLC Lease: clause 5

Communal Parts

All parts of the estate used in common but excluding

The Blocks (see *Relevant Block*)

Shops

Mooring Basin Complex

Residents' Clubroom

Head Porter's House

Garages, baggage stores and parking spaces.

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BDL Lease: Definitions

GLC Lease: Definitions

Estate Expenditure

- The cost of providing and maintaining the *Estate Services* but excluding some of the insurance obligations, notably:
 - Cost of insuring the garages, parking spaces, and baggage stores. These are allocated elsewhere as *Additional Expenditure*.
 - Cost of lift insurance, allocated elsewhere to (internal) *Block Expenditure*.
- The cost of accounting and determining the service charges.
- The cost of the maintenance and upkeep of the Residents' Club Room and the Resident Manager's (BDL leases) or Head Porter's (GLC Leases) House and any communal facilities on the Estate.
- Legal, incidental and other costs not falling under the head of either *Block Expenditure* or *Additional Expenditure* including those incurred in the "maintenance and proper and convenient management and running of the Estate".

BDL Lease: clause 4.3 refers Schedule 6 Part ?, refers clause 5.1.1.d.1

GLC Lease: clause 4.3 refers Schedule 6 Part ?, refers clause 5.1.IV

(Part no is ? because this varies between documents, depending on how many parts the Block charges take up and where they are located. Which part is relevant is obvious in any particular case).

Estate Services

The *Estate Services* are as follows:

- Maintaining, Cleaning, Lighting and Cultivating the *Communal Parts*, but excluding anything that can be done at the Public expense
- Decoration, renewal etc of the above.
- Paying taxes due from and legally demanded of the Company.
- Insuring the Estate property against normal perils, and all interested parties against third party loss or injury. Also against loss due to boiler or lift breakdown. Note that the cost of lift insurance although defined as an *Estate Service* is not attributable to *Estate Charges* (see under that definition above).
- Providing lessees with copies of the insurance policies and receipts for payment thereof on demand, but no more than once a year.
- Rebuilding or reinstating any part of the Estate destroyed or damaged by fire within three years. If that is impossible, terminating the lease and equitably sharing out the insurance moneys.
- Maintaining and operating the boiler and heating system and to providing central heating from 1st October to 30th April each year, or for such time as the Company decides is reasonable.

BDL Lease: clause 5

GLC Lease: clause 5

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Financial Year

The financial year is 7th April to 6th April, can be varied at the lessor's discretion.

Relevant Financial Year is the *financial year* for which the aggregate service charge is being determined.

BDL Lease: clause 4.1, 4.2

GLC Lease: clause 4.1, 4.2

Relevant Block

The block in which your property is situated. The definition of the area occupied by the block is that shown on the Estate Plan. Your lease defines the Block Number of your Block.

BDL Lease: Definitions and first Schedule

GLC Lease: Definitions and first Schedule

Relevant Financial Year

The *financial year* for which the aggregate service charge is being determined.

BDL Lease: clause 4.1, 4.2

GLC Lease: clause 4.1, 4.2

6: Differences between GLC Leases and BDL Leases

Here are a few differences I have noticed between the old 99 year leases and the new 999 year leases. It is in no way an exhaustive list of differences.

Definition of shops has been changed to shop, both as defined on the estate plan.

Definition (in words) of Mooring Basin Complex has changed. The plan, so far as I can tell from my rather tattered old copy, has not changed. The GLC lease refers to the mooring basin, restaurant and Boat House. The BDL lease refers to the Marina Club and Marina mooring basin only. I guess that the Boat House is what we commonly call the warehouse under the Marina Club Patio.

I have found no mention in either lease of what we call the Gardeners' Warehouse adjacent to the Lock gate. On the Estate Plan this is called the "Estate Stores"

Definition of the "Head Porter's" house (GLC) has been replaced by the "Resident Manager's" house (BDL). This is the property adjoining the Resident's Clubroom. It is still shown on the Estate Plan as the Head Porter's House in both GLC and BDL leases.

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Definition of The Estate: the BDL lease includes a new proviso, that the boundaries of the estate may be varied from time to time at the absolute discretion of the lessor. The GLC lease had no similar proviso.

Schedule 4 of the BDL lease contains four new clauses reserving to BDL the following rights:

- To build anew and make alterations as BDL thinks fit, including such that might affect the access of light or air to the lessee's property.
- A reiteration of the previous clause, with a proviso that a reasonable means of access to the lessee's property must be maintained at all times.
- Any rights BDL may have granted or grant within 80 years to any other lessee or occupant of the Estate. (Author's comment: a bit opaque this one?)
- To vary the boundaries of the Estate at BDL's absolute discretion.

7: The BDL Handbook

The Brentford Dock Handbook circulated in July by Brentford Dock Limited is a useful document, especially to newcomers to the Dock. However it is potentially misleading in its explanation of Estate Charges and Block Charges (see Section 4 of the Handbook, page 14).

The Handbook is correct in saying that the Estate Charges cover all Estate-wide services, but only a few of the examples given are actually solely or even mainly *Estate Expenditure*. According to the definitions drawn from the leases the activities of maintenance, cleaning and rubbish removal within the Blocks are *Block Services* and therefore must be charged as *Block Expenditure*.

The Handbook is correct in saying that the Block Charges cover expenditure which is specific to individual blocks. However the "communal service pipes" which are given as an example of Block Charges, insofar as they are part of the heating system seem to me to belong under *Estate Services*.

I have not noticed the term "Due Proportion" defined in the Handbook on page 14 in the leases I have seen. The term used in the leases is "Specified Proportion", and an individual's specified proportion is shown in Schedule 6, part 3 or part 5 depending on your lease. The meaning of the two terms appears to be similar.

8: Questions arising

My research into the leases has raised a number of questions in my mind. I hope at least some of them can be answered easily enough. I have grouped the questions into a number of broad topics.

8.1 Accounting Practices

Have the definitions and accounting requirements set out in the leases actually been put into practice? The question can be further broken down into a number of specifics.

Are the salary costs of cleaning and rubbish removal properly apportioned as between Block Expenditure and Estate Expenditure and

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what are the relevant proportions of the totals shown in the annual accounts?

The same question applies to each of the individual activities that comprise the services, including maintenance, decorating, etc., etc. Has the lift insurance been correctly allocated, and only to the Relevant Blocks, which exclude the low-rise blocks which do not have lifts? Are the costs of security staff broken down as between those taking place within the Blocks and those in the Communal Parts and if so what are the relevant proportions of the totals shown in the annual accounts?

Is the line management cost of delivering the various services itself fairly allocated to the appropriate categories of expenditure and what are the relevant proportions of the totals shown in the annual accounts services under each category?

8.2 Legal Status of Services

Is BDL entitled to deliver and charge lessees for services which are not defined in the lease?

I have found no mention in the leases of a security service. Perhaps the “Head Porter” of old, as a resident member of staff, would have been expected to fulfil that function.

Since the leases specifically exclude the lessor from some activities which are public responsibilities (e.g., maintaining those roadways which are maintained at public expense), is a security service not duplicating the role of the police for which we already pay?

- BDL took counsel’s advice about the legality of introducing a Security Service in 1985. Counsel (Nicholas Merriman QC) advised the Company was seeking to improve the running of the Estate and so could be charged as *Estate Expenditure* under the clause “maintenance and proper and convenient management and running of the Estate”. (DS20020831)

Is BDL entitled to sweep Augustus Close? This is specifically excluded from being an Estate Service, because Augustus Close is a Road “Reparable at the Public Expense”.

Is BDL entitled to deliver residents’ mail around the Dock at a cost to all Lessees?

8.3 Differences between the two types of Lease

Are the building rights in the new clauses of the BDL Leases excessive?

The powers are very wide, and designed to permit the Company to do whatever is necessary when the buildings eventually reach the end of their natural life. (It is likely they will not stand for a thousand years!) However it is arguable that the clauses should be weakened, to exclude building such as might obstruct the main views from the Estate, for

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example over the River from Julius, Augustus houses and maisonettes, upper floors of Nero, Otho, Numa, Romulus. Planning law and pressure on land will certainly change over a few hundred years, and then what now seems far-fetched could become reality unless prevented by the leases.

8.4 Block gardens

Are there any Garden Areas that actually serve only the *Relevant Block*? See definition of *Block Services*.

8.5 Head Porter/Resident Manager

Does the fact that both GLC and BDL leases refer to the House which is 2 Augustus Close in this way imply that lessees have a right to expect it to be occupied by one or the other type of person, giving on site emergency contact 365 days per annum (less holidays)?

If so, does BDL have a right to change the job title and description of the house, or to let it for commercial gain?

8.6 Marina complex

Does the fact that both GLC and BDL leases refer to the Marina Complex imply that the Marina Club (BDL Lease) or Restaurant (GLC Lease) which are part of the Marina Complex must function as a club/restaurant?
Does BDL have the legal right to convert the premises to other uses?

Does the fact that the “boat house” is being excluded from the definition of the Marina Complex in the BDL leases mean that it will become part of the *Communal Parts*, and that its upkeep costs will therefore become *Estate Expenditure*?

8.7 GLC agreement

There is an old agreement between the GLC and Estmanco (Brentford Dock) Ltd which may be relevant to some of these questions. Any contributions toward understanding those possibilities would be welcome.

8.8 The Book of Rules

Does the Book of Rules (see section 11) exist? Is it maintained?

9: Feedback Received

I raised the matter of allocation of service charges to BDL sometime ago. The core response is that current practice in allocating charges is following precedent. I believe BDL have taken legal advice, but they have not disclosed

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that advice. They have however undertaken to review these practices for 2003/4. (Letter dated 9th August 2002)

On 31st August I received a letter from my Block Director, David Shavreen, which is a useful contribution to part of the debate. The letter is not available in electronic form, nor do I have time to transcribe it. I have edited some of the comments into the question (8.2) above, annotated as DS20020831. This letter also makes a number of other useful points, which I have put into a new section 11.

10: Comments on Recommended Solicitors

At the time the BDL leases with extended tenures were first offered, BDL published a recommendation that lessees use one of the firms of solicitors which they listed. These solicitors had all participated in some way in the drafting of the new leases, and could therefore be expected to understand them. We might infer that these solicitors would need to ask few questions of the Company's solicitors and that in all ways costs would be kept to a minimum.

It might be expected that each of the recommended solicitors would have a standard document detailing the differences between the two types of lease. A solicitor has a professional duty (legally a fiduciary relationship with his client) to bring these differences to your attention.

Riseam Sharples & Fok, one of the firms on the list, has since become BDL's own solicitors.

How much have lessees in fact been charged, and what is their opinion of the service provided? Did your solicitor point out the salient differences between the old and new leases as detailed above? Did your solicitor put your mind at ease about these differences?

My own experience of Anthony Holden Crofts & Co has so far been very disappointing. I was simply sent the engrossed (final version) lease and invited to sign it and pay up. None of the differences between GLC and BDL leases were drawn to my attention. The plan on the lease I was invited to sign contained material inaccuracies. The matter is not yet completed, so I do not know what the final cost will be. However I thought the total fees (BDL's plus my own) demanded were reasonable at £1216, or at least would have been had the job been done properly with due advice given. However I was told the fees now being charged have recently increased.

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11: Freedom of BDL to depart from the wording in the original leases

Clause 3.2 of GLC and BDL leases gives the lessor the right to amend and modify the rules and regulations governing lessees behaviour as set out in Schedule 5. Any such variations must be recorded in a dedicated book available for inspection by the lessee on written request.

Schedule 5 is a list of prohibited behaviours, such as

- Interfering with external appearance/decoration
- Throwing rubbish down waste pipes or obstructing rubbish chutes
- Annoyance of neighbours by noise
- Putting up signs/placards/plates in windows or externally
- Hanging out clothes etc
- Throwing out rubbish and shaking out mats from windows
- Keeping animals which “may cause annoyance”
- Erecting external aerials/satellite dishes

12: Document History

Version 1.0 sent to BDL 27/08/2002

Version 1.1: dated 28/08/2002 Tidied up and indexed. Added new section 10 on Solicitors

Version 1.1.1 29/08/2002 replace the word “charges” with “expenditure” in 2 places section 5. Added author information

Version 1.2.1 31/08/2002 improved section 6 following close inspection of the Estate Plan. Added new section 11 and renumbered Document History as section 12. Added to Section 8.8. Improved section 10. Added new section 8.8 (book of rules) and moved responses from BDL into section 9. Amended definition of Estate Expenditure to include costs incurred in “maintenance and proper and convenient management and running of the Estate”. Updated section 8.2 with input from D Shavreen. Added a second question under 8.6

Author: Anthony Warren
3 Augustus Close
Brentford
Middlesex TW8 8QE

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Email: (preferred medium) amwarren@freeuk.com
Tel & Fax: 020 8568 6230

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Agenda of additional matters to be covered

- Status of laundry room and Estate Stores
- Area hatched blue on Estate Plan