Leasehold Reform Law News

Bishop & Sewell LLP

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# Welcome to the second edition of Leasehold Reform News

***This is the second edition of our series of updates on the latest developments in the area of Leasehold Reform. Aimed at both clients and professionals we hope that you will find it interesting and informative. Response to issue one has been very positive and if readers have any comments or suggestions for future issues do let us know.***

*Those of you who were at the ALEP conference in April will know that ALEP has been consulting its members about a proposed letter to the government to offer to assist in consultation on legislative reform in this area.*

*For further information or legal advice, please feel free to contact a member of the Landlord and Tenant Team at Bishop & Sewell LLP.*

## Howard De Walden Estates v Les Aggio and others [2007] EWCA Civ 499 (Mummery Arden Jacob LLJ)

***Can the holder of a headlease take advantage of the 1993 Act and serve individual lease extension notices in respect of multiple residential flats comprised in the headlease ?***

The key question in this case was how far does the right to extend an individual lease actually go. Or, to put it another way, how far can the definition of the 'flat' contained in section 101 of the 1993 Act be stretched?

The 1993 Act gives long leasehold flat owners the right to extend their lease by an additional 90 years at a peppercorn ground rent subject to a notice of claim being served on the landlord and the appropriate procedure being followed.

The right conferred by the 1993 Act was clearly aimed at individual flat owners. However, over time the question of what can be included with the flat has been expanded and clarified.

Importantly, the statute itself recognises that the flat owner may well have additional areas (such as a garage or storage area or yard) that are used with the flat and which may also be let to the flat owner under the terms of a similar long lease.

Indeed, even where the flat itself forms an amalgam of one or more adjacent properties or an additional area such as a staircase or landing has been added to the property, the law will permit the inclusion of the additional areas. More importantly, the definition of the qualifying tenant's lease is such that co-extensive leases held between the same landlord and same tenant will be treated as being part of the lease for the purposes of the claim. This much is settled law.

The interesting point in the *Les Aggio* case is the extent to which the envelope of the property comprised in the lease can be pushed.

*Les Aggio* concerned conjoined appeals, both from freeholders of residential blocks of flats that were subject to a head lease, where the owner of the head lease had attempted to serve notices under section 42 of the 1993 Act claiming extended leases in respect of all of the individual flats in the building.

Both cases concerned a situation where the lease in question was a lease of a whole building that was divided into individual flats, i.e. there were no individual long leases in place in respect of the flats.

The court held that the right to extend the lease could not apply in situations like these as the 1993 Act did not put in place any kind of scheme for dividing up the covenants for the repair of the building or the common parts as would be left over if individual leases were to be granted in respect of the flats. As a result the claims for extended leases failed.

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# Boss Holdings v Grosvenor West End Properties and others [2008] UKHL 5

**In this case the tenant had an 18th Century Central London house. The property was originally designed as a house but had subsequently been used as commercial premises. As at the date that the notice of claim was served, under the 1967 Act claiming the freehold to the house, the upper floors were dilapidated and not habitable.**

The court had to consider the question as to whether the property constituted a 'house' within the meaning of section 2(1) of the 1967 Act. The County Court and the Court of Appeal both looked at the meaning of 'designed or adapted for living in' as at the date of the notice of claim.

The House of Lords disagreed. It was their view that whether the property was 'designed or adapted for living in' at the relevant date was not material and that the question should be considered having regard to whether the property had been designed or adapted in this way at the date it was built.

In this particular case nothing had happened to the building during its lifetime to substantially detract from the fact that the upper three floors had been set out for residential use.

There was an argument that the property had been adapted for mixed business and residential use but this did not affect the outcome of the appeal. A property does not need to be adapted solely for living in to be a house.

This is an important decision, but one key point to note is that the question as to whether a building originally designed for living in but subsequently adapted to another use would qualify for the purposes of the 1967 Act has not yet been answered. It is my view that it would not, but we will have to wait and see.

## Landlord and tenant team

The landlord and tenant team at Bishop & Sewell LLP can assist with all aspects of the leasehold reform legislation. Headed by Mark Chick the team regularly advise on freehold purchase and lease extension claims. The team has a particular focus on larger projects, complex transactions and Central London properties.

Bishop & Sewell LLP are also members of ALEP,(the Association of Leasehold Enfranchisement Practitioners) an organisation committed to maintaining high standards and continuing education for those working in the field of Leasehold Reform.

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