

What qualified as a 'flat' in collective enfranchisement of freehold claim (Aldford House Freehold Ltd v Grosvenor (Mayfair) Estate)

12/11/2019

Property analysis: The Court of Appeal held that a separate set of premises is not a flat (as defined) unless at some stage in its history it has reached a stage of construction to be suitable for use for the purposes of a dwelling—as the premises had not reached that stage, they were not yet flats. Sam Laughton, a barrister at Ten Old Square Chambers, considers the ruling.

Aldford House Freehold Ltd v Grosvenor (Mayfair) Estate and another [\[2019\] EWCA Civ 1848](#), [\[2019\] All ER \(D\) 17 \(Nov\)](#)

What are the practical implications of this case?

This case concerned collective enfranchisement of the freehold of a building by qualifying tenants of flats under the [Leasehold Reform, Housing and Urban Development Act 1993](#) (LRHUDA 1993). An initial notice under [section 13](#) of LRHUDA 1993 to acquire the freehold needs to be given by a number of qualifying tenants that is not less than half the number of flats contained in the building. The notice must also state the names of *all* the qualifying tenants of flats contained in the premises specified in the notice ([LRHUDA 1993, s 13\(3\)\(d\)](#)). Otherwise the notice is invalid—*Natt v Osman* [\[2015\] 1 WLR 1536](#), [\[2014\] EWCA Civ 1520](#).

It is therefore crucial to identify what is, or is not, a 'flat' for this purpose. A difficult issue can arise in situations where one or more parts of the building is in the process of reconstruction. A 'flat' for the purpose of [LRHUDA 1993](#) must be:

- 'a separate set of premises', *and*
- 'constructed or adapted for use for the purposes of a dwelling' ([LRHUDA 1993, s 101](#))

It is necessary to examine each of these limbs separately, and it is possible (as in this case) that an area of the building might constitute 'a separate set of premises' but not yet at the 'relevant date' (the date of service of the initial notice) 'constructed or adapted for use for the purposes of a dwelling'. This will be the case where the original flats have lost their identity and constitute premises in the course of construction. They may be intended to be used for residential purposes but at the relevant date have not in fact been used for that purpose and are incapable of use for that purpose.

It should be cautioned, however, that each case must be considered on its own facts. For example, if a flat has merely been gutted by fire or stripped out for refurbishment, it would still qualify as a 'flat' for the purpose of [LRHUDA 1993](#) since it has at some stage in the past been constructed for use as a dwelling and has not lost its identity as such.

What was the background?

At the relevant date, the sixth and seventh floors of the building were undergoing substantial works of construction, by which each of the original separate single flats on each floor were effectively demolished internally, amalgamated into newly built space and then divided into two flats. By the relevant date, the structural works had been completed and they contained new raised floorboarding and suspended ceilings but no internal walls (other than the dividing wall), pipes, cables or other items of fit out. The two sets of premises on each floor were separated from each other by a dividing wall and locked pairs of access doors, which were designed to be opened to facilitate work to fit out the flats for occupation. New leases had already been granted of each of the four intended new flats.

The initial notice did not state the names of the tenants of the areas described as flats 61, 62, 71 and 72, which were on the sixth and seventh floors of the building. The landlord contended that the notice was invalid since it did not state the names of all the qualifying tenants of flats contained in the building.

What did the court decide?

‘Separate set of premises’

The Court of Appeal decided that the relevant question here was whether there was or was not physical separation between the various spaces. On the facts of this case, the physical separation between the areas was enough for each area to amount to a ‘separate’ set of premises. The fact that the separation was potentially reversible with little effort did not mean that the two areas were not in fact separate on the relevant date.

‘Constructed for use for the purposes of a dwelling’

The Court of Appeal noted that the definition of ‘flat’ starts with a set of premises that has been ‘constructed’. If a putative flat is in the course of construction, it has not yet been ‘constructed’ for any purpose. Furthermore, a flat must be constructed ‘for use for the purposes of a dwelling’. This is more than simply requiring that a flat must be constructed for the purposes of a dwelling. It must be constructed for use for that purpose. A purpose may be a future purpose. But if a separate set of premises is to be constructed ‘for use’ as a dwelling, it must be in a state in which it is suitable for use as a dwelling.

A separate set of premises is not a flat (as defined) unless at some stage in its history it has reached a stage of construction to be suitable for use for the purposes of a dwelling. The intended flats on the sixth and seventh floors had not reached that stage. Accordingly, they were not flats. The initial notice was therefore not required to name the lessees of what would become the remaining four flats.

It follows that the initial notice was valid.

Case details

- Court: Court of Appeal (Civil Division)
- Judges: Lady Justice Rafferty, Lord Justice Lewison and Lord Justice David Richards
- Date of judgment: 1 November 2019

Sam Laughton’s practice encompasses a broad range of Chancery litigation and advisory work, with a particular focus on both commercial and private disputes relating to property. He is particularly skilled in multi-disciplinary litigation, drawing on his expertise in: land contracts; restrictive covenants and easements; commercial and residential landlord and tenant, including enfranchisement; personal and corporate insolvency; commercial disputes and company law; family and corporate trusts; wills, probate and the administration of estates; and professional negligence arising out of these fields.

Interviewed by Kate Beaumont.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

FREE TRIAL