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On the house –Introduction to the Leasehold Reform Act 1967

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November 17 2015

Statutory authority



- *Leasehold Reform Act 1967(as amended)*
- *Leasehold Reform (Enfranchisement and Extension) Regulations 1967 SI 1967/1879*
- *Leasehold Reform (Notices) Regulations 1997 SI 1997/640*

Statutory authority



- *Leasehold Reform (Notices) (Amendment) (England) Regulations 2002 SI 2002/1715*
- *Leasehold Reform(Notices)(Amendment)(No.2)(England) Regulations 2002 SI 2002/3209*
- ***There are similar Statutory Instruments in Wales post 1999***

The appropriate Tribunal



- The First-tier Tribunal (Property Chamber)
 - England
- The Leasehold Valuation Tribunal
 - Wales

What is a house?



- Leasehold Reform Act 1967, Section 2 (1)
 - For the purposes of this Part of this Act, "house" includes **any building designed or adapted for living in and reasonably so called**, notwithstanding that the building is not structurally detached, or was or is not solely designed or adapted for living in, or is divided horizontally into flats or maisonettes; and
 - where a building is divided horizontally, the flats or other units into which it is so divided are not separate "houses", though the building as a whole may be; and
 - where a building is divided vertically the building as a whole is not a "house" though any of the units into which it is divided maybe

What is a house?



- A building
- Designed/adapted for living in
- Reasonably called a house

What is a house?



Building?



- Built structure
- Some degree of permanence
- Common sense test
 - Boats, moveable caravans not likely to be houses

Designed or adapted for living in?



- What purpose was the building originally designed for?
- Has the original design been changed?

Reasonably so called?



- *Lake v Bennett [1970] QB 663*
 - does not matter if it can reasonably be called something else
- *Tandon v Trustees of Spurgeons Homes [1982] AC 755*
 - Mixed premises eg a shop or takeaway with a flat above
 - If a building is designed or adapted for living in it would take "exceptional circumstances for it not to be a house."
- *Magnohard Ltd [2012] EWCA Civ 594*
 - Purpose built block of flats cannot be a house reasonably so called

The Supreme Court decides...



• *Day v Hosebay Ltd; Howard de Walden v Lexgorge Ltd* [2012] UKSC 41

- Self-catering rooms and solicitor's offices with a flat above
- Definition should be read in the context of Parliament's intention that the statute concerned "houses" as places to live, instead of regarding them in terms of architecture
- On a common sense interpretation the physical appearance of a building should not be determinative of whether it is a "house" for these purposes, and its description as a house for other purposes eg as architectural histories is irrelevant

The latest decision



- *Jewelcraft Ltd v Pressland and another*
- [2015] EWCA Civ 1111
- Court of Appeal
- Judgment dated 29th October 2015
- Ground floor shop with residential accommodation above
- It was a house within S2(1) meaning

Does not have to be detached



- May be divided horizontally but not vertically
- Flats/units not houses in their own right but the building as a whole could be

Overhang



- References in this Part of this Act to a house do not apply to a house which is not structurally detached and of which a **material part** lies above or below a part of the structure not comprised in the house.
- S2(2) of the 1967 Act

Overhang



- *Malekshad v Howard de Walden Estates Ltd [2002] All ER 193 HL*
 - material? – 2% unlikely to be but 10% is

House and premises



- Subject to the following provisions of this section, where in relation to a house let to a tenant reference is made in this Part of this Act to the house and premises, the reference to premises is to be taken as referring to any **garage, outhouse, garden, yard and appurtenances** which **at the relevant time** are **let to him** with the house
- S2(3) of the 1967 Act

Procedure – first steps



- Check that both leaseholder and building qualify
 - long tenancy, owned 2 years
- Establish identity of landlord
 - Section 1 Landlord and Tenant Act 1985

Procedure – first steps



- Consider informal route
- Draw up Claim Notice

Claim notice



- Prescribed by Statute
 - Note different statutory Instruments for England and Wales
 - England SI 1997/640 and SI 2002/1715
 - Wales SI 2002/3187
- Service
 - Section 23 Landlord and Tenant Act 1927
 - Personal is best
 - Recorded or registered post can be used

Post notice procedure



- Leaseholder
 - Register notice
 - Unregistered and registered land
 - Pay deposit if requested
 - £25 or 3 x Ground Rent
 - Deduce title if requested
 - Assignment of notice
 - S5 (2)

Post notice procedure



- Landlord
 - Serve copies on any interested parties not served
 - Establish who "reversioner" is for purpose of dealing with notice
 - Notice in reply

Effect of serving notice



- Statutory contract
- Conditions of sale set out in Enfranchisement Regulations
 - England SI 1967/1879, SI 2003/1989
 - Wales SI 2004/699
- Costs
 - S9 (4)

Withdrawal



- Up to one month after price agreed or determined
- Costs
- 12 month bar on serving fresh notice

Death of tenant



- S7 1967 Act
- After service of notice
 - Benefit passes to PR's
- Before service of notice
 - PR's serve notice within 2 years

Role of court



- Section 20 LRA 1967
- Civil Procedure Rules
- Entitlement to acquire
- Obligations arising out of tenant's notice of claim

Role of Tribunal



- Section 21 LRA 1967
- Price payable
- Reasonable costs

Procedure



- Completion
 - Four weeks after price agreed/determined
 - Failure to complete
 - Pay apportioned rent
 - Discharge of mortgage

Absent landlord procedure



- Freehold purchase only
- A problem if there is only 1 Landlord
- Tips for finding
 - Land registry
 - Death certificate
 - Probate search
 - Newspaper advertisements
- What if landlord turns up?

Absent landlord procedure



- Apply to county court
 - CPR Part 8 Claim
 - Form N208
- Court may order further steps to trace landlord
- Case transferred to Tribunal
- Tribunal determines appropriate sum
- Tenant pays appropriate sum into court
 - premium plus ground rent
- Conveyance

Three bases of valuation under the 1967 Act



- Section 9(1)
 - most beneficial for leaseholders
- Section 9(1A)
- Section 9(1C)
 - most beneficial for freeholders
- Initial notice and notice in reply should state which is the alleged valuation basis.

Tests to decide valuation basis



- Get to know the qualifying conditions
- Low rent test
- Rateable value or other financial limits test
- Further value limits test
- Where tenancy of house and premises extended under 1967 Act and the notice of claim given after the original term date expired
 - Section 9(1C)
- Right to Buy leases under the Housing Act 1985
 - Section 9(1A)

The appropriate day



- 23/3/1965 or if later the date on which the property was given a rateable value

Greater London



- London Boroughs, the City of London and the Inner and Middle Temples
- Section 2 London Government Act 1963

Section 9(1) financial limits



- Lease before 1st April 1990
- rateable value on "appropriate day" must be not more than £200 or £400 where within Greater London

Section 9(1) financial limits



- Lease on or after 1st April 1990-abolition of rateable values for domestic rating
 - $R = \frac{P \times I}{1 - (1+I)^{-T}}$
 - P=premium payable on grant of lease
 - I =0.06
 - T=term granted by the lease.
 - **R=must be not more than £25,000**

Section 9(1) financial limits



- Where "appropriate day" is on or after 1/4/1973
 - if lease granted on or before 18/2/1966 then rateable value of the house and premises on the "appropriate day" must be not more than £750 or £1,500 where within Greater London
 - if lease granted after 18/2/1966 then rateable value of the house and premises on the "appropriate day" must be not more than £500 or £1,000 where within Greater London

Section 9(1) financial limits



- Where "appropriate day" is
 - before 1/4/1973
 - and lease granted on or before 18/2/1966
- In those cases where rateable value was more than £200 (£400 in Greater London) reference to "appropriate day" becomes a reference to date 1st April 1973 and the sums of £200 and £400 are replaced respectively by the sums of £750 and £1,500

Section 9(1) low rent test



- Leases granted before 1/4/1990
 - yearly rent payable on relevant date and for the previous two years less than 2/3 of rateable value on the "appropriate day" or if later the first day of the term
- Leases granted on or after 1/4/1990
 - yearly rent payable is equal to or less than £250 or £1000 where within Greater London

Proviso

- Leases granted between 1/9/1939 and 31/3/1963
 - yearly rent at start of lease less than 2/3 of the letting value of the property (other than building leases)

Section 9(1)final test



- Rateable value of house and premises on 31/3/1990 must be £1000 or less in Greater London or £500 outside
- If no rateable value on 31/3/1990 then R must be equal to or less than £16,333 under the above formula

Section 9(1A) conditions



- Same rateable value or other financial limits as for Section 9(1)
- Also meets low rent test as for Section 9(1)
 - But not within the financial limits as at 31/3/1990 (final test)

Section 9(1C) conditions



- Section 9(1) financial limits exceeded
- Lease extended under the 1967 Act and notice of claim given after the "original term date" of the lease

What is a Section 9(1) valuation?



- Open market value subject to following assumptions-
 - Lessee and family members are not buying (marriage value excluded)
 - Freehold sold subject to lease
 - No-Act world
 - Lease assumed to have been extended even if it has not been
 - Site value
 - Most favourable basis for leaseholder

What is a Section 9(1A) valuation?



- Open market value subject to the following assumptions
 - Lessee and family members are buying (marriage value included)
 - Freehold sold subject to lease
 - No-Act world
 - Lease assumed not to have been extended even if it has been
 - Lessee not obliged to repair
 - Price reduced to reflect value of any improvements undertaken by leaseholder
 - Security of tenure

What is a Section 9(1C) valuation?



- Similar assumptions to Section 9(1A) valuation
- Can claim for "other loss"
 - Section 9A

Extension of lease under 1967 Act



- New lease for term ending 50 years after term date of existing lease
- "Modern ground rent" starts after term date and subject to review after 25 years
- To qualify existing lease must be
 - at a low rent
 - property must fall within certain rateable value or other financial limits
- Two years ownership rule applies

Is it worth doing?



- Cannot seek another 1967 Act extension
- Many properties will not qualify
- Now has statutory protection
- Now has right to buy freehold but watch out for Section 9(1C)
- No premium to pay but modern ground rent can be high
- Enhance marketability of house

What restrictive covenants in the lease can be imposed?



- The landlord cannot require the continuance of any of the covenants imposed by the lease except
 - Restrictions affecting the house and premises capable of benefiting other property and enforceable by person(s) other than the landlord
 - Restrictions affecting the house and premises capable of benefiting other property enforceable only by landlord *and* which *materially enhance* the value of the other property
 - Restrictions affecting other property which *materially enhance* the value of the house and premises
- These can be continued with suitable adaptations (Section 10(4) of the 1967 Act)

Can the use of the house and premises be restricted?



- Yes so long as the restriction will
 - Not interfere with the reasonable enjoyment of the house and premises as they have been used throughout the lease; *and*
 - *Materially enhance* the value of other property in which the landlord has an interest

Any other terms that can be imposed in the transfer?



- Restrictions which affect the house and premises, are not in the lease and enforceable for the benefit of other property
- Nothing in the 1967 Act permits the inclusion of positive covenants
- Unless there is an estate management scheme in place there is no mechanism for requiring lessee to contribute towards the costs of common facilities

Unreasonable covenants



- Neither the lessee nor the freeholder can require the inclusion in the transfer of a covenant which is unreasonable in view of changes since the lease was created affecting its suitability or where the lease was one of a number of leases of neighbouring houses the interests of those affected in the other houses
 - Section 10(5) of the 1967 Act

What is material enhancement?



- Includes idea of maintaining a value which would otherwise deteriorate
 - "Ackerman v Mooney" [2009] PLSCS 266
- The Lands Tribunal have accepted that the diminution in value need not be substantial but rather that "material enhancement itself includes the concept of maintaining a value which would otherwise deteriorate"
 - "Moreau v Howard de Walden Estates Ltd (LRA/2/2002)"

Issues to watch out for



- Shared ownership leases
- Schedule 8 of Housing Act 1974
 - Adjustment to rateable value to take account of lessee's improvements
 - Section 3(3) of the 1967 Act-successive leases
- Designated rural areas
 - low rent test



Issues to watch out for

- Still a residency requirement where
 - Part of house is flat let to a qualifying tenant under the Leasehold Reform Housing and Urban Development Act 2002 or
 - The tenancy is a business one under Part II of the Landlord and Tenant Act 1954 and lease for a term of at least 35 years
- Residency requirement
 - Main residence for last two years or two years in the previous ten years



Questions?

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Next webinar: 26 November 2015

- **Property insurance: How to avoid changes in policy terms impacting on service charges**
 - How new exclusions relating to "persons lawfully on the premises" can impact on all leaseholders
 - Escape of Water: some surprising new exclusions to avoid
 - The action insurers are taking to combat the rise of cannabis farms and the implications to property managers
 - Financial Conduct Authority: the implications of non-compliance for property managers
 - How the recent changes in Pool Re terrorism will affect costs and what alternatives are available
 - The real cost of the 50% plus increase in Insurance Premium Tax
