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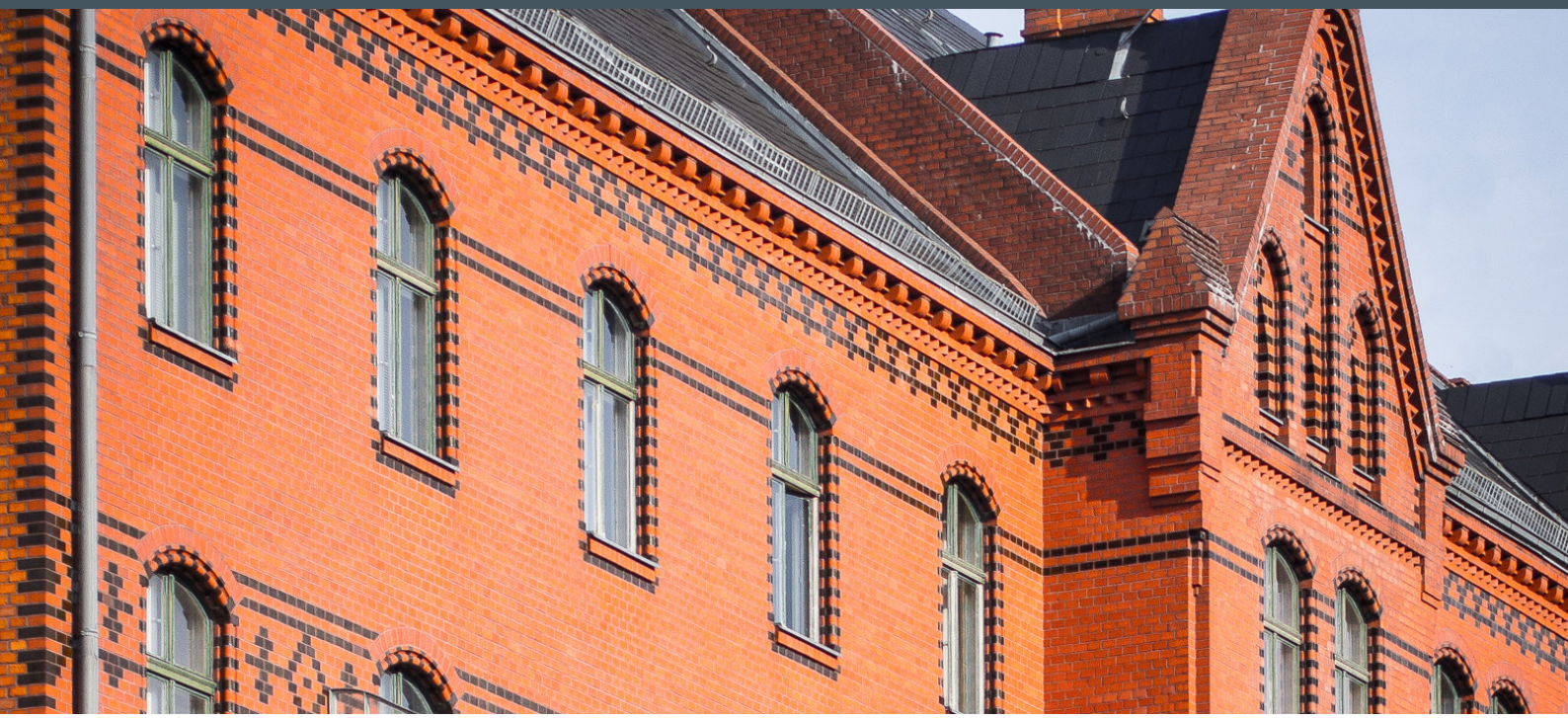

Supreme Court decision favours landlords

Sequent Nominees Limited v Hautford Limited 2019

The Supreme Court has by a majority of 3 – 2 reversed the Court of Appeal decision in Sequent Nominees Limited v Hautford Limited 2019. The decision is an important one for landlords since they will now be justified in refusing consent for an application for change of use on the grounds that it will lead to the tenants acquiring enfranchisement rights.

The case concerned a one hundred year lease of a whole building in Soho granted in 1986 for a premium of £200,000.00 at a peppercorn rent. The Tenant, Hautford, wanted to apply to the council for a change of use of the first and second floors of the building to residential use. Had a successful application been made, it would have resulted in approximately 52% of the building being in residential use.

The relevant floor area of commercial to residential in a building is an important factor in deciding whether a successful claim can be made by a tenant for the freehold of the building under the Leasehold Reform Act 1967. Once the residential percentage reaches a certain point, the prospect of a successful claim increases and this in turn has a detrimental impact on the value of the landlord's property. The landlord felt that this was sufficient reason to refuse consent.

The lease, which at the date of the trial had less than seventy years remaining, contained a fairly wide user covenant that restricted the use to that of a retail shop, offices, storage studio or for residential purposes.

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Clause 3(19) of the Lease required Hautford to perform and observe all of the provisions and requirements relating to town and country planning and contained a qualified covenant which prevented Hautford from applying for planning permission without the landlord's consent, such consent not be to be unreasonably withheld.

At the trial two floors of six in the building had planning consent for residential use, the basement and ground floor was authorised for retail use and the first and second floors were authorised for office/ancillary use. This meant that at approximately 25% of the building was in residential use. As stated above, a successful application would have resulted in 52% of the building being in residential use.

In response to the request for change of use Sequent refused permission on the ground that giving consent would increase the prospect of a successful claim by Hautford to enfranchise under the Leasehold Reform Act 1967. Sequent also stated that it also wanted to retain control of the building for estate management purposes, as it formed part of a block of adjacent and contiguous properties in their freehold ownership. Both of the courts below found that sequence's refusal of consent was unreasonable because to hold otherwise would be to re-write the user covenant and prevent the tenant from being able to use the entire demised premises for the permitted residential purposes.

The Surpreme Court held that the Landlord should succeed in its appeal since seeking to avoid a significant increase and the risk of enfranchisement was "the quintessential type of consideration rendering reasonable the refusal of consent". Those in the majority felt that the user clause does not confer an unqualified right on the tenant to use the premises for the purposes permitted by the lease but that it must be read together with the separate planning clause with the result that the tenant is only permitted to use such parts of the premises as are permitted by the planning regime.

The case did turn on its own facts but it has handed landlords another useful weapon to use when trying to prevent a tenant's claim to the freehold under the Leasehold Reform Act 1967 which may in turn improve the value of its assets.

Key contacts

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