More on houses

When is a house reasonably so called? A recent judgment throws some further light on the issue, as Natasha Rees finds out

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'In order to qualify as a "house" under s2(1), a property must be "designed or adapted for living in" and, if it passes that test, it must "reasonably be called a house"'.

Enfranchisement practitioners are waiting with bated breath for the outcome of two appeals in the Supreme Court known collectively as 'Hosebay'. Both appeals concern the definition of a 'house' under the Leasehold Reform Act 1967. It is expected that the Supreme Court will hear both appeals in July this year and that a decision will be reached by September. It is widely hoped that the Supreme Court will clarify the law in this area.

In the meantime, the Court of Appeal has been grappling with the meaning of 'house' in a more recent appeal known as *Magnohard Ltd v Cadogan* [2012]. Kim Lewison, who gave the leading judgment in this appeal, said it was regrettable that it was necessary to refer to extensive case law to decide the meaning of the word 'house' given that it was one of the 200 most frequently used words in the English language.

The plethora of appeals concerning the meaning of the word 'house' have come about as a result of the removal of the residence condition in 2003. Before this, any tenant making a claim for the freehold under the 1967 act had to be residing in the property which meant that the question of whether the building qualified as a 'house' was a fairly obvious one. Since the Commonhold and Leasehold Reform Act 2002 came into force, commercial tenants can now seek to enfranchise provided that the company itself is not occupying the property for the purpose of its business. Landlords are therefore receiving more and more claims from head lessees of buildings containing flats or buildings that are in commercial use. Many of these claims are stayed awaiting the outcome of Hosebay; which is why the decision is so eagerly anticipated.

The law

Section 1 of the 1967 act enables a tenant of a 'house' let under a long lease to serve notice on its landlord seeking to enfranchise. Over the past 35 years the ambit of s1 has been successively extended. The value limitation was raised and then removed and the low rent test has, in the majority of cases, been removed. The last amendment effected by s138 of the 2002 act effectively removed the residence condition and replaced it with a two-year test of ownership. The consequence of this, as stated above, is that property investors and commercial tenants can now seek to enfranchise. Parliament did try to mitigate the consequences of this amendment by introducing a new subsection (1B), which effectively excludes tenants who have the protection of the 1954 act. In practice commercial tenants can often get around this problem by de-coupling the lease from the business use.

Section 2 of the 1967 act contains the definition of a 'house'. In order to qualify as a 'house' under s2(1), a property must be 'designed or adapted for living in' and, if it passes that test, it must 'reasonably be called a house' (see box on p9).

The facts

The building that the court had to consider in this appeal is situated

on a corner opposite Sloane Square Underground station. It is a large Victorian building originally constructed in 1888 as six flats, a housekeeper's flat and three shops on the ground floor. In terms of size it extends to 20,000 sq ft. As at the date of the claim it had been altered so that it contained eight residential flats and three shops.

The lease under which the tenant was claiming the freehold was granted in 1986 and provided that each self contained flat had to be used as a single residence in one occupation only.

In this case the court only had to consider the second limb of the house test, namely whether the building was a 'house reasonably so called'.

First instance decision

HHJ Marshall QC decided at first instance that the building was primarily a block of flats and was not, therefore, a house reasonably so called. She said that the question was a short one and that it was really just necessary to consider the character of the building. If a building could reasonably be called a 'house', but could equally reasonably be called something else then it would fall within s2. In this case her immediate reaction was that the building was a block of flats rather than a house divided into flats and so it could not reasonably be called a house.

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Court of Appeal

The Court of Appeal was referred to eight previous cases in the Court of Appeal and three cases in the House of Lords that had considered the meaning of the word 'house'. The sheer number of previous appeals illustrates quite how difficult the question has become. HHJ Lewison said it was clear from the authorities that the words 'reasonably so called' are words of limitation. This was stated by Lord Denning MR in the earliest case of *Lake v Bennett* [1970] and by Lord Roskill in *Tandon v Trustees of Spurgeon Homes* [1982]. It was also re-stated by LJ Mummery in the more recent case of *Prospect Estates Ltd v Grosvenor Estate Belgravia* [2008].

It is also clear that the fact that a building might be called something other than a house is not sufficient to trigger the exclusion. As HHJ Marshall QC stated if a building can reasonably be called a house but can also reasonably be called something else then it will fall within s2. The parties presented the court with a lot of historical evidence of the building, which was considered to be interesting but fairly irrelevant

since the key issue was the external and internal physical character and appearance of the building at the date of the claim.

The judges in the previous cases above had cited examples of buildings that would be excluded by these words of limitation such as hotels, purpose built hostels and purpose built blocks of flats. HHJ Lewison felt that the building fell into this latter category and that it could not reasonably be called a 'house'. In view of this he dismissed the appeal.

The Master of the Rolls also gave judgment and commented on the arguments raised on behalf of the tenants by Mr Jourdan QC. The first of these relied on Lord Roskill's statement in *Tandon* in which he said:

> … if a building is designed or adapted for occupation as a residence, by which is plain from section 1(1) of the Act of 1967, is meant designed or adapted for occupation as a residence, only exceptional circumstances, which I find hard to envisage would justify a judge in holding that it could not reasonably be called a house.

Neuberger LJ felt that this sentence did not assist the tenant because occupation as a residence does not extend to occupation as more than one residence. He drew this conclusion from the natural meaning of the word and the Interpretation Act 1971, which provides that the general rule, namely that singular includes plural, does not apply to judgments. He also felt that Lord Roskill was referring to flat above a shop, ie a single residential unit rather than a large block of flats.

Another point made by Mr Jourdan QC was the fact that it would be strange if the building in this case could not reasonably be called a house given the Court of Appeal's decision in Hosebay. If that decision was correct then if the building in question had originally been constructed as a house in single occupation but later converted into a block of flats in the same configuration it would be a house reasonably so called. Neuberger LJ felt that Hosebay could be distinguished because the buildings in that case had originally been constructed as houses for single occupation, and none of them had been converted into a block of flats. He therefore felt that there was no inconsistency with Hosebay, and that HHJ Marshall's decision was not inconsistent with it.

Section 2 of the 1967 Act

'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:

a) Where a building is divided horizontally the flats or other units into which it is divided are not separate houses although the building as a whole may be; and

b) 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 may be.'

The final point made on behalf of the tenant relied on the description of the premises in the original lease which was granted in 1988. The premises were described as a 'messuage or tenement and premises', and it was argued that messuage was a term used by conveyancers in 1988 to refer to a house. Neuberger LJ did not agree that the use of an arcane technical word in an early lease was a helpful guide as to whether a building could reasonably be called a house in 2010.

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Conclusion

This judgment clearly supports the view that the words 'house reasonably so called' are words of limitation. When applying the test it is necessary to consider the external and internal physical character and appearance of the building at the date of the claim. Buildings such as purpose built hotels or hostels and purpose built blocks will be excluded.

Neuberger LJ did say in his judgment that a building 'constructed laid out and used block of substantial self-contained flats throughout its 120 years of existence cannot reasonably be called a house – at least in the absence of very unusual factors'. This suggests that the conclusion might be different where a building was not originally constructed as self-contained flats, or where the building has not always been used as self-contained flats. Certainly it seems that there is room for further argument should slightly different circumstances arise.

The tenants were refused leave to appeal to the Supreme Court but in his judgment Neuberger LJ suggested that if an application was made to the Supreme Court the it should consider the application quickly and decide whether it should be listed with Hosebay or stayed pending the outcome of Hosebay. It is understood at the time of writing that leave has been granted and that the appeal will also be heard by the Supreme Court in July. ■

Lake v Bennett
[1970] 1 QB 663
Magnohard Ltd v Cadogan & ors
[2012] EWCA Civ 594
Prospect Estates Ltd v Grosvenor Estate Belgravia
[2008] EWCA Civ
Tandon v Trustees of Spurgeon Homes
[1982] AC 755