

Is a Holiday Home a “House”?

In a recent case in which Adam Rosenthal QC appeared for the successful lessees, *Mortimer & Others v Eco Chic Limited* (Judgment – 10 January 2022), the Court considered whether the Leasehold Reform Act 1967 applies to holiday homes.

S.2(1): A “Simple” Definition

One of the most litigated statutory provisions in the property field is s.2(1) of the Leasehold Reform Act 1967 which defines a “house” which may be the subject of an enfranchisement claim, entitling the leasehold owner to buy the freehold (and all superior interests) on the terms of the Act. This short subsection has been considered by the House of Lords / Supreme Court five times and in many more reported decisions of the Court of Appeal. The principal elements of the definition provide that a “house” extends to a building “*designed or adapted for living in and reasonably so called*”.

Various amendments were made to the 1967 Act by the Commonhold and Leasehold Reform Act 2002, which included the abolition of a residence test. Thereafter, it was not necessary for a leaseholder who wished to acquire the freehold of the house to have lived in it for a defined period, opening the way to claims by investors and other leasehold owners. As might be expected, this led to claims to enfranchise all sorts of buildings on the basis that there was some degree of residential occupation within them (in some cases, of a very tenuous nature).

The most recent Court of Appeal decision on this subject is *Grosvenor (Mayfair) Estate v Merix* [2017] EWCA Civ 190. Since then, the flood of litigation surrounding the meaning of this subsection seems to have eased.

Holiday Homes

None of the many reported cases on the meaning of “house” in s.2(1) of the 1967 Act has addressed the question of whether it can apply to a holiday home. That was the question for the Court in *Mortimer & Others v Eco Chic Limited*. Of course, holiday homes come in different shapes and sizes, so there can be no point of principle whereby a holiday home is or is not within the scope of the Act. However, the issue is considered to be of widespread application. There are many estates in the UK which have been developed as leisure / holiday sites where self-contained units of accommodation are sold off on long leases with the freeholder providing leisure and other facilities for the benefit of the occupants of the accommodation and generally managing the estate.

In *Mortimer*, the Court heard the consolidated claims of the lessees of four luxury dwellings on the Lower Mill Estate, near Cirencester who had served notices on the freeholder to acquire the freehold of those dwellings. The freeholder objected to the notices on the ground that the dwellings were not “houses” within s.2(1) of the Act and therefore did not qualify for enfranchisement. There were, principally, two features of the nature of the right to occupy these dwellings which the freeholder relied upon. First, the leases were subject to a covenant by the lessee to occupy the

properties only as “*a private holiday residence*”. This coincided with the terms of a planning agreement made when the houses were built. Secondly, there was a prohibition on occupying the accommodation between 6 January and 5 February in each year.

S.2(1) requires, first, that a building (or self-contained part of a building) has been “designed or adapted for living in” (albeit “not solely designed or adapted for living in”). These buildings had not been adapted since they were originally constructed but the freeholder argued that they were not “designed for living in” because they were designed to be holiday homes. This argument was rejected.

The main plank of the freeholder’s case was that taking into account the physical setting and nature of the properties and the restrictions on their use and occupation, they were not “houses reasonably so called”. The Court also rejected this argument by the freeholder. Specifically, the Court considered that the amendments to the 1967 Act made by the Commonhold and Leasehold Reform Act 2002 were significant when considering whether it is reasonable to call a particular building a house. Since it is not necessary for the lessee to use the house as a principal residence, it is difficult to see why a holiday home which is used by the lessee and family / guests should not be within the scope of the Act. In *Hosebay v Day*, the Supreme Court made clear that the purpose of the Act is to confer rights on the leasehold owners of houses as places to live in. In *Mortimer*, the Court concluded that this purpose applied equally to the holiday homes held by the claimants in the four cases before the Court.

That is not to say that this is a one-size-fits-all criterion. In any other case, it will be necessary to consider the nature of the holiday home, the shared facilities, whether it is used by the lessee or for short-term holiday lets and the terms of the user restrictions. However, if this decision is followed, it will be difficult for the freeholders of estates of this sort to stand in the way of the enfranchisement of the long leases of the holiday homes across the estate.

A copy of the judgment can be found [here](#).

- [Adam Rosenthal QC](#)