

Property: When is a 'house' not a 'house'?

Adam Swirsky

S. 1(1) of the Leasehold Reform Act 1967 allows a tenant of a long lease to acquire on fair terms the freehold or an extension of their lease. The only definition of a 'house' for the purpose of the Act is found in s. 2 and this excludes a 'house' that isn't structurally detached or a 'house' where a material part of that house lies above or below a part of the structure not comprised in the 'house'.

In **Freehold Properties 250 Ltd v Beverley Ann Field & others [2020] EWHa 792 (Ch)** the court had to consider whether the owners of the long leases of a number of houses on the same development were entitled to acquire the freehold title when their leases excluded certain structural parts of the building including the roof and foundations. At first instance the freehold owners had lost, arguing that the 'houses' demised were not houses within the meaning of s. 2(1) of the Act.

On appeal, the appellant argued that the right to enfranchise applied only to a tenant of the whole of a leasehold house thereby excluding the houses subject to the appeal in circumstances where the structural parts of the houses were excluded from the demised premises such that the tenants were tenants of part only of a house and did not have the right to enfranchise. The appellant pointed to the provisions of s. 2 and argued that it would have been curious if, without further statutory articulation, some legal interest less than an interest in substantially the whole of the leasehold sufficed to qualify for enfranchisement.

The court agreed with the appellant freehold owners and went on to consider the anti-avoidance provisions in s. 23 which provide that any agreement relating to a tenancy shall be void in so far as it purports to exclude or modify any right to acquire the freehold or an extended lease or right to compensation under this Part of this Act. However, the court found that this provision was not sufficiently wide to include a provision which limited the tenant's demise to just part of a building, even if that limitation had the consequence of taking a lease outside of the ambit of the Act.