

Right to enfranchise former houses? Not always.



PROSPECT ESTATES LTD V GROSVENOR ESTATES LTD

In its judgment last week in **Prospect Estates Ltd v Grosvenor Estates Ltd [2008] All ER (D) 202** the Court of Appeal declined to follow comments made by Lord Neuberger in the House of Lords judgment in **Boss Holdings Ltd v Grosvenor West End Properties Ltd** and held that a building originally designed as a house, but subsequently converted to offices, did not qualify for enfranchisement under the Leasehold Reform Act 1967.

The case concerned a property in Belgravia that was originally constructed in around 1850 as a terraced house. The original building was converted to offices and further floors were added with the fourth floor providing residential accommodation ancillary to the offices. Interestingly, the Court of Appeal looked at the terms of the lease and the relevant proportions of the mixed use in reaching its decision that it was no longer reasonable to call the property a "house".

The decision is somewhat surprising given the comments made only 10 months ago by the House of Lords in the Boss Holdings case. Their Lordships did not have to decide the point on that occasion, but hinted at what their decision may have been. Lord Neuberger suggested in that case that, as a matter of literal interpretation, a property designed as a house but adapted for another purpose would still be a "house" and therefore potentially subject to the right to enfranchise even if not used as a dwelling for many years.

The Court of Appeal decision is authoritative and binds the lower courts. Grosvenor was denied permission to appeal by the Court of Appeal and it remains to be seen whether it will seek permission to appeal from the appellate committee of the House of Lords.

We would not be surprised if the House of Lords took the case on the basis that it involves a point of public importance. Whilst the Court of Appeal's decision undoubtedly reflects the current law, the suspicion is that we have not heard the last of this issue. It would therefore be prudent to continue to be alive to and plan for the possibility of enfranchisement of "houses", even where they are anything but!

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