

## When A House Is Not A Home

Most people have a reasonably clear idea of what constitutes a house and yet the interpretation of this beguilingly simple word has led to some leading case law over the years. The latest offering in this long line of litigation is from the House of Lords in the case of *Boss Holdings Ltd v Grosvenor West End Properties and others* (2008) and concerned the interpretation of the words “designed or adapted for living in” found at section 2(1) of the Leasehold Reform Act 1967.

The 1967 Act was the first of two major enfranchisement statutes and has been subject to various amendments over the years, the latest under the Commonhold and Leasehold Reform Act 2002. Importantly, this abolished the residence requirement and left in place a simple two-year ownership requirement, allowing company tenants (and indeed second home owners) to enfranchise, provided the property in question was not occupied solely for the purposes of the tenant’s business. Broadly speaking, the Act confers two rights on tenants of long leasehold houses; the right to a lease extension (now in limited circumstances) or a right to purchase the freehold.

As one would expect, these rights are curtailed by various qualification criteria relating to the status of the tenancy itself, period of ownership by the tenant and, critically, the nature of the building and accommodation in question.

The wording used in section 2(1) of the Act, the subject of so much legal debate, states that “...a 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...”.



Previously, the House of Lords gave some guidance on the meaning of a house for the purposes of the Act in *Tandon Trustees v Spurgeon Homes* (1982) and concluded that mixed use buildings that comprised part residential and part commercial may qualify, provided the building was also a house “reasonably so called”. The rather surprising consequence of this is that the familiar sight of a high street shop with residential accommodation immediately above could constitute a house within the meaning of section 2(1). However, no Court, until the *Boss Holdings* case, had looked solely at the interpretation of “designed or adapted for living in”.

The facts of the case are unusual. The property in question was a six storey town house in Mayfair that was built in the 18th century as a single private residence. In 1942, the property was divided into mixed use, with the upper three floors being retained as residential and the remaining floors commercial. By the time the notice of claim under the Act was served on the freeholders, the Grosvenor Estate, the property had been stripped back to its basic structure. Plaster had been hacked off some of the walls and floorboards removed. The freeholders refused the claim and the County Court agreed that the tenant’s claim was not admissible. On appeal, the Court of Appeal upheld this decision arguing, with some logic, that as the building was nothing more than an internal shell and was not physically fit for immediate occupation, it could not, at the time the notice was served, be designed or adapted for living in within the meaning of the Act. One might have assumed that was

the end of the road for the tenant but, undeterred, it took the matter to the House of Lords.

To the surprise of many property practitioners, the House of Lords decided that the tests applied by the earlier courts had been incorrect and overturned the decision of the Court of Appeal. The Court’s view was that despite the dilapidated and uninhabitable state of the building, this did not necessarily disqualify the building from the outset. The Court’s reasoning was that the natural meaning of the word “designed”, a past participle, suggested an involvement with the past. This meant that it was necessary to apply a two-tier test and to consider the property as it had been originally built, or originally designed, and then to consider whether it had subsequently been adapted to some other use. If the latter applied, to what use had it been adapted? In every case therefore it was necessary to consider whether the building was originally designed for living in or had subsequently been adapted for that purpose.

The Court also considered that it was unhelpful to ask whether the property was fit for immediate residential occupation at the date of the claim, as the Court of Appeal had done, as the interpretation of the words could lead to uncertainty and confusion. A test in such terms was by its nature subjective and likely to lead to differing opinions of what did and did not qualify for immediate occupation. The Court also thought it was significant that the requirement to reside in the property had been abolished as a condition of enfranchisement. It therefore did not

make sense to imply a term into section 2(1) that the building in question must be capable of being lived in at the date of the claim. In light of all of this, it was the original design of the building that mattered and since in this case that was as a house and the internal configuration of the building remained largely as a house, the property qualified under the Act. This was so even though the lower floors of the building were being used for commercial purposes as there was no requirement under the Act that the building be solely designed for living in.

An interesting outcome, but where does that leave matters now? Many property practitioners feel the decision has hindered rather than helped to clarify matters. This was compounded by comments of Lord Neuberger, who gave the lead judgement, which suggested that a building originally designed for living in but subsequently adapted to non-residential use, such as commercial offices, would nonetheless qualify as a house under the Act. In other words, once a building was constructed as a house, it would remain as a house. Although Lord Neuberger’s observations did not form part of the main judgement and as such are not binding law, they mark a departure from the original purpose of the Act, namely, to provide enfranchisement opportunities to ordinary householders in England and Wales. Instead, we can expect a new genre of claimant; ambitious, commercial organisations who will no doubt seek to push the boundaries of enfranchisement claims still further. This is unlikely to be the last word on the subject.



**Anna Favre**  
Solicitor  
Direct dial: 020 7591 3318