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housing update

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Weaver ruling stands after Supreme Court refuses to hear appeal

The Supreme Court has refused to hear an appeal in the Weaver case which established that the provision of social housing is a function of a public nature for the purposes of the Human Rights Act.

The judgment is likely to have a significant impact on what would otherwise be routine possession proceedings in the social housing sector. The occupier may be able to put forward a defence based on human rights and public law. Decisions made by registered social landlords could also be subject to legal challenge on the same grounds.

The issue arose after London & Quadrant Housing Trust sought a mandatory order for possession against one of its assured tenants, Susan Weaver, who had accrued substantial rent arrears. The application was made under the Housing Act 1988 Sch 2 Ground 8 on the basis that the tenant was eight weeks in arrears.

The tenant submitted that the Trust was a public authority within the meaning of the Human Rights Act 1998 and so could be subject to judicial review. She therefore applied for a judicial review of its decision to seek a mandatory possession order. Her case was that the Trust had failed to pursue all reasonable alternatives before using Ground 8.

The court considered that the management and allocation of housing stock by LQHT is indeed a function of a public nature and that LQHT is to be regarded for relevant purposes as a public authority.

Registered social landlords such as the London & Quadrant Housing Trust were different to ordinary commercial businesses. Social landlords could be heavily subsidised by the state and

could play a role in the implementation of Government policy. They worked side by side with local authorities and in some cases could be said to have taken their place. The Trust, therefore, as a public body could be subject to judicial review.

However, the court then rejected the tenant's application for such a review because her claim that the Trust had fallen short of her 'legitimate expectation' that it would pursue all reasonable alternatives to recover the rent arrears was too tenuous and general to be enforceable in public law.

The Trust then appealed against the ruling that it could be regarded as a public body and be subject to judicial review. However, the Court of Appeal upheld the decision last June and now the Supreme Court has refused to hear a further appeal.

It means the decision stands and will almost certainly have serious implications for a large number of social landlords.

The court did however find for LQHT on the substantive issue. Having found their actions to be reasonable, proportionate and in keeping with the obligations of a "public body", detailed records showing that Mrs Weaver had been given every opportunity to resolve her rent arrears and that it had attempted to maintain the tenancy until Mrs Weaver's continuing failure to pay rent made it impossible to do so.

The eviction was upheld. The case emphasises the importance of good practice and procedure.

Should a company 'sign' or 'execute' a leasehold enfranchisement notice?

A company wishing to take part in a leasehold enfranchisement could do so by authorising someone to sign the initial notice on its behalf.

There was no need to comply with more complex "execution" procedures laid down in the Companies Act 1985.

That was the ruling of Central London County Court in HILMI & Associates Ltd v 20 Pembridge Villas Freehold Ltd (2009). The enfranchisement involved a block of seven flats. The nominated purchaser comprised of four lessees of those flats – three individuals and one company.

The initial notice was signed by the three individuals and the company authorised one of its directors to sign on its behalf. HILMI sought a declaration that the notice was invalid.

It submitted that in order for a company to satisfy the requirements of the Leasehold Reform, Housing and Urban Development Act 1993, it would need to comply with the formal requirements for the execution of

documents laid down in the Companies Act 1985. It argued that merely signing the document in the same way as an individual lessee would not be sufficient.

The court, however, rejected this argument. It held that the 1993 Act did not require that such documents should be "executed" as outlined in the Companies Act. It pointed out that there was a significant difference in meaning between "executed" and "signed".

The word executed related to more formal situations and so would be used in connection with deeds and similar documents. The word signed could be defined by its ordinary, everyday meaning. The 1993 Act required that a document should merely be signed.

A company could therefore authorise an officer to sign on its behalf and the notice would be valid.

LVT decision overturned because it failed to consider all the evidence

A decision by a leasehold valuation tribunal relating to service charges has been overturned because the tribunal did not fully consider all the documents and evidence available to it before reaching a conclusion.

The LVT had been required to determine the reasonableness of service charges proposed by Hyde Housing Association Ltd for a number of its properties in Winchester. The charges related to 2006/07 and 2007/08. The budgets put forward included the sums of £2,986 and £5,088 for the two years respectively.

These figures were intended to build up a reserve fund for future expenditure on miscellaneous items. The tenants objected and Hyde offered to reduce the sum for 2007/08 to £2,544.39.

The case then went before the LVT which found that the figure for both years should be nil. It said it did so on the grounds that it had no evidence to support Hyde's figures.

Hyde requested permission to appeal saying that there had been evidence including a survey report in the documents put before the LVT which supported the case for the proposed charges.

The LVT refused permission saying: "The Tribunal takes the view that if parties wish to rely on any documents in support of their case, it is for that party specifically to put forward evidence at the hearing, rather than the Tribunal being required to sift through every page provided in a bundle for use at the hearing."

Permission to appeal was later granted by the Lands Tribunal and that appeal was then heard by the Upper Tribunal (Lands Chamber).

Hyde submitted that the LVT did have evidence before it in the form of a report by an independent consultant.

This report had assessed the life cycle of various elements of the premises and the anticipated cost of repair and replacement. It meant that the proposed miscellaneous charges were reasonable and had been supported by evidence.

The Upper Tribunal noted that while Hyde had only estimated the costs of the miscellaneous items when it put its figures forward to the tenants, by the time of the tribunal it was able to back up those proposals with the evidence from the consultant's report.

In giving her decision, Her Honour Judge Alice Robinson, said: "I consider the LVT was wrong to state in paragraph 13.d of its decision that reasonableness can only be considered as at the date of the demand and not with the benefit of hindsight.

"Where one is dealing with estimates of future expenditure evidence may subsequently emerge which sheds light on whether a figure is a reasonable one. The tribunal is not required to shut its

eyes to the evidence and assess the sum for 'miscellaneous' items as nil on the grounds that at the time of demand there was insufficient evidence to support the reasonableness of the figure demanded when the Appellant has subsequently obtained an expert's report which identifies what a reasonable sum would be.

"It follows from the above that the LVT erred by stating that there was no evidence to support the claim for 'miscellaneous' items and failed to take into account the evidence which was before it.

"If the LVT had taken that evidence into account the only proper decision it could have reached on the evidence is that a reasonable sum for 'miscellaneous' items of anticipated future expenditure for the purposes of building up a reserve fund for both the years 2006/2007 and 2007/2008 would have been £2,544.39.

"The appeal is allowed to this extent."

Courts have a clearly defined remit in possession order reviews

When a court reviews the making of a possession order against a demoted tenant it has to restrict its remit to considering whether the correct procedures were carried out in accordance with the relevant legislation.

It should not concern itself with the rationality of the landlord's decision or whether that decision was consistent with the tenant's rights under the European Convention on Human Rights 1950 (the Convention).

That was the ruling of the Court of Appeal in the case of Manchester City Council v Pinnock.

The tenant had lived at a council property with his partner and adult children for 30 years. The authority obtained a demotion order after the court found that the tenant's family had been responsible for a number of anti-social incidents at or near their home.

It then applied for possession of the property following two further incidents involving the tenant's sons. A review took place which supported the termination of the tenancy.

At the following possession proceedings, the judge held that his review could not include any consideration of rights under the Convention.

The tenant appealed saying the review should have been broader and should have considered whether the panel's decision satisfied the requirements of the Convention.

However, the Court of Appeal rejected this view. It held that in a case like this where the behaviour of the tenant or of those living with him was so serious that it justified a demotion order, then very little was needed to justify a further decision by the landlord to obtain possession.

At this stage in the proceedings, the authority and the court were acting to enforce statutory provisions. If those provisions turned out to be incompatible with the Convention they would still be lawful by virtue of the Human Rights Act 1998.

In this particular case, therefore, the judge had simply to ensure that statutory procedure had been followed. As there had been no suggestion that it had not, the judge was obliged to make an order for possession.

Court of Appeal upholds an anti-social behaviour injunction against former tenant

A man has failed to have an anti-social behaviour injunction (ASBI) against him lifted on the grounds that he was no longer a housing authority tenant and neither were most of his alleged victims.

When giving its decision, the Court of Appeal said it would be most unfortunate if a council terminated a person's tenancy only to then find that it was powerless to protect his former neighbours from his continuing campaign of intimidation.

The issue in Swindon Borough Council v Michael Redpath (2009) centred on whether the term "housing related" should be given a broad or narrow interpretation in relation to anti-social behaviour injunction legislation.

Mr Redpath had been a secure tenant until he was eventually evicted because

of his alcohol abuse and the fact that he became a nuisance to neighbours after he had been drinking.

It was alleged that he had pursued a campaign of harassment against some local residents. A year before his eviction he had been subject to an ASBI prohibiting him from entering a local residential street. He failed to comply and was jailed. He then became subject to a second injunction which he again breached giving rise to a third injunction.

He opposed this saying that he was no longer a tenant of the housing authority and neither were the people complaining about his behaviour. The court therefore had no jurisdiction because his anti-social behaviour was not "housing related" within the meaning of the Housing Act 1996 as it did not relate to the authority's role in housing management.

The Court of Appeal rejected this approach saying that a correct interpretation of anti-social behaviour legislation showed that the jurisdiction should be seen as being broadly based rather than narrow. Indeed, the management functions of a housing authority were themselves broadly expressed in the statutes.

It was part of the housing authority's responsibility to preserve the peace in the area around its residential properties and in doing so it should not have its scope and powers narrowed artificially.

Depending on the facts of the individual case, a local authority may be faced with a choice of an injunction or an anti-social behaviour order. As long as it was a genuine choice, the authority could choose whichever it preferred as far as jurisdiction was concerned.

There was no statutory requirement that the subject of an injunction should be a local authority tenant. The way that this person had "haunted" a local bus shelter and some garages belonging to nearby residents was "housing related" conduct.

Furthermore, the local authority's role in housing management meant it had a responsibility to its current tenants and to owner-occupiers to curb the conduct of a former tenant when necessary.

This is an important ruling which makes it clear that social housing landlords can bring ASBIs against former tenants who continue to cause problems in the vicinity of their properties.

It further highlights that the issue of whether or not the victims are owner/occupiers doesn't matter. They will still be regarded as victims of housing related anti-social behaviour by the courts.

Upper Tribunal dismisses appeal to divert from Sportelli deferment rate

The Upper Tribunal (Lands Chamber) has rejected an appeal that a 5% deferment rate based on Sportelli should not apply in the case of an 87-year reversion.

The case involved Sherwood Hall (East End Road) Management Company Ltd and Magnolia Tree Ltd. The tenants of the 36 flats at Sherwood Hall were taking part in a collective enfranchisement.

A valuation took place in August 2005. Following this both parties agreed that the ground rent income should be capitalised at 6% and the long leasehold interest in each flat was £230,000 unimproved. It was further agreed that these values should be uplifted by £1,000 to reflect the freehold value.

However, the two sides could not agree a deferment rate for some of the flats which had unexpired lease terms of 87.6 years.

The matter went before a leasehold valuation tribunal which set the deferment rate at 5%. In doing so it relied heavily on the decision of the Lands Tribunal in Cadogan v Sportelli (2007) that a deferment rate of 5% should be used on flats with unexpired lease terms of more than 20 years.

Sherwood Hall appealed on the grounds that Sportelli had considered lease terms of between 21.25 and 71.05 years. The tenants at Sherwood Hall had leases of 87.6 years and these should be treated differently. It submitted that a deferment rate of 7% would be more appropriate.

The Upper Tribunal accepted that it was open to a tenant or a freeholder to attempt to demonstrate that a different deferment rate should be set for longer reversions. However, in doing so they would have to provide evidence to show why such a change would be justified.

Sherwood Hall had tried to provide such evidence by referring to other cases where different deferment rates had been set. However, the Upper Tribunal considered that these cases were not relevant as the deferment rates had been changed for reasons other than the length of the lease.

For example, Sherwood Hall quoted the case of 220 Ladbroke Grove which had an unexpired term of 123 years. The LVT in that case had added 0.25% to the Sportelli starting point.

However, the Upper Tribunal said that decision had been for reasons to do with the location rather than the length of the lease and so it was not applicable to the Sherwood Hall case. The appeal therefore failed and the deferment rate of 5% was allowed to stand.

Housing Trust wins appeal to alter service charges

… but it cannot ask tenant to make up for previous occupier's shortfall

A housing trust has won its appeal to be allowed to alter its service charges and its charges for heating and hot water.

However, it cannot ask a tenant to pay extra to make up for a shortfall which occurred before she even moved into her flat.

Those were the findings of the Upper Tribunal (Lands Chamber) in a case involving Circle 33 Housing Trust Ltd and one of its tenants, Michelle Segovia.

Circle 33 had sought to alter the relative amounts paid for general service charges and for heating and hot water in 2006/07. Its reason for doing so was to balance a surplus in service charges and a shortfall in heating and hot water charges in 2004/05.

The tenant objected and in 2008 the Leasehold Valuation Tribunal held that Circle 33 had failed to complete an Appendix of the Tenancy which meant it was not permitted to alter the service charge or the charge for heating and hot water from the initial sums specified.

The LVT also held that Circle 33 could not charge Ms Segovia extra to make up for a deficit that occurred before her tenancy began.

Circle 33 appealed saying the failure to complete the appendix was merely a clerical oversight and did not mean it

could not alter its charge for services. It also said that it could not recover the shortfall from the previous tenant and "there was nothing wrong with operating a continuing account for service and other charges which took into account a surplus as well as shortfall".

The Upper Tribunal upheld Circle 33's appeal relating to altering the level of service and heating charges. However, it dismissed the appeal relating to recovering the deficit from the previous tenancy.

In giving her decision, Her Honour Judge Alice Robinson, said: "I consider that if the Appellant wishes to be able to charge for services on this basis and in particular to charge a tenant for services supplied to a former occupier because the previous service charge estimate was too low then the Tenancy must clearly say so.

"It does not. I recognise that the shortfall cannot be recovered from the previous tenant under the terms of the Tenancy, assuming them to have been the same. However, that does not entitle the Appellant to recover them from the Respondent unless the Tenancy clearly provides for it."

The case was referred back to the LVT to consider the reasonableness of the service charge, including heating and hot water, for 2006/07.

Tenancies 'granted by mistake' must remain in force

A housing authority which granted tenancies to people by mistake has been told that it cannot repossess the properties.

Birmingham City Council operated a housing allocation scheme in accordance with the Housing Act 1996 to identify applicants for residential accommodation tenancies.

One of its officers granted tenancies to people who did not have priority under the scheme. Once it realised the error, the authority sought to repossess the properties. However, the judge held that the tenancies had not been granted in circumstances that would justify repossession.

They were valid secure tenancies and as such they were binding on the authority. The authority appealed on the grounds that the tenancies were void as they had been granted to people who had not been selected in accordance with the allocation scheme. It submitted that the authority was therefore justified in repossessing the properties.

The Court of Appeal has now rejected those arguments. It held that the authority was blurring the distinction between its duty to allocate accommodation in accordance with its scheme and its ability to dispose of accommodation in accordance with its statutory powers.

Its failure was in not complying with the required selection procedures rather than the actual granting of the tenancies. The subsequent granting of the tenancies was therefore not outside its powers. This meant the tenancies were valid and the authority could not repossess the properties.

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