HOUSE OF LORDS SESSION 2007–08
[2008] UKHL 5

on appeal from: [2006] EWCA Civ 594

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

Boss Holdings Limited (Appellants) v Grosvenor West End Properties and others (Respondents)

Appellate Committee

Lord Hoffmann
Lord Scott of Foscote
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Lord Neuberger of Abbotsbury

Counsel

Appellants:
Edwin Johnson QC
(Instructed by Butcher Burns)

Respondents:
Anthony Radevsky
Mark Sefton
(Instructed by Boodle Hatfield)

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LORD HOFFMANN

My Lords,

1. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Neuberger of Abbotsbury. For the reasons he gives, with which I agree, I too would allow this appeal.

LORD SCOTT OF FOSCOTE

My Lords,

2. I have had the advantage of reading in advance the opinion of my noble and learned friend Lord Neuberger of Abbotsbury and am in full agreement with the reasons he has given for allowing this appeal.

LORD RODGER

My Lords,

3. I have had the advantage of considering in draft the speech to be delivered by my noble and learned friend, Lord Neuberger of Abbotsbury. I agree with it and, for the reasons which he gives, I too would allow the appeal.

LORD WALKER OF GESTINGTHORPE

My Lords,

4. I have had the advantage of considering in draft the opinion of my noble and learned friend, Lord Neuberger of Abbotsbury. I agree with it and, for the reasons which he gives, I too would allow the appeal.

LORD NEUBERGER OF ABBOTSBURY

My Lords,

5. The short issue in this appeal is whether a property at 21 Upper Grosvenor Street, London W1 is a "house" within the meaning of section 2 (1) of the Leasehold Reform Act 1967 as amended.

6. Section 1(1) of the 1967 Act, as originally enacted, provided as follows:

> "[Part I] of this Act shall have effect confer on a tenant of a leasehold house, occupying the house as his residence, a right to acquire on fair terms the freehold or an extended lease of the house and premises where-
>
> (a) his tenancy is a long tenancy at a low rent and the rateable value of the house and premises [is below certain limits]; and
>
> (b) at…the time when he gives notice in accordance with this Act of his desire to have the freehold or to have an extended lease…he has been tenant of the house under a long tenancy at a low rent, and occupying it as his residence, for the last 5 years or for periods amounting to 5 years in the last 10 years…"

7. Section 2 of the 1967 Act defined "house" and "house and premises"; subsection (1) is the only provision of relevance for present purposes, and it was in these terms:

> "…'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: and-
>
> a) where a building is divided horizontally, the flats or other units into which it is so divided are not separate 'houses' although the building as a whole may be: and
>
> b) where a building is divided vertically the building as a whole is not a 'house' though any of the units into which it is divided may be."

8. Over the past forty years, significant amendments were made from time to time to the 1967 Act, with a view to extending its reach. Thus, the low rent and rateable value limits in section 1(1) were substantially amended by the Housing Act 1974, then again by the Leasehold Reform, Housing and Urban Development Act 1993, and most recently by the Commonhold and Leasehold Reform Act 2002. More importantly for present purposes, any requirement that the tenant should occupy or should have occupied the house as his residence in Section 1(1) was removed by the 2002 Act, in all but a few cases. However, despite the significant amendments that have been made from time to time to the 1967 Act, section 2(1), the primarily relevant provision for the purpose of this appeal, has remained unchanged.

9. The property is subject to a lease granted on 30th June 1948 for a term of 87½ years from 25th December 1946. On 14th October 2003, the then-tenant under the lease, Kingdom Properties SA, served a notice on the landlord, the first respondent to this appeal, Grosvenor West End Properties, which holds a head lease from the freeholder, Grosvenor (Mayfair) Estate. Both these companies are part of the Grosvenor Estate, and it is unnecessary to distinguish between them. By the notice, which was in the form prescribed by the 1967 Act, Kingdom sought to acquire the freehold of the property. Some two weeks later, Kingdom assigned the lease, together with the benefit of the notice, to the appellant, Boss Holdings Ltd.

10. On 29th October 2003, Grosvenor served a counter-notice, disputing the tenant's right to acquire the freehold of the property, on the basis that it was not a "house" within the meaning of section 2(1). That issue came before his Honour Judge Cowell in the Central London Civil Justice Trial Centre on 16th May 2005, when he upheld Grosvenor's argument and dismissed Boss's application for a

declaration that it was entitled to acquire the freehold of the property. Boss appealed, and on 21st March 2006 the Court of Appeal upheld the Judge's declaration, in a decision reported at [2006] 1 WLR 2848. Boss now appeals to your Lordships' House.

11. It is, quite rightly, common ground between the parties that the question of whether or not the property constitutes a "house" must be determined as at the date Kingdom gave the notice seeking to acquire the freehold, namely 14th October 2003. So I turn to describe the relevant history of the property up to that date.

12. The property was built in the fourth decade of the eighteenth century. The Judge described it as "a fine looking house" consisting of a basement, ground and four upper floors "in a grand terrace of buildings…with an Edwardian façade added about 100 years ago". It was built as a single private residence, and was continuously used as such for over 200 years until 1942, when it was occupied by the Free French Government in Exile. From about 1946, the three upper floors were fitted out for residential use, and the three lower floors were occupied for a dress making business. Under the lease granted in 1948, (a) the second and third floors were to be used as a self contained flat, with the fourth floor for the occupation of servants, and (b) the lower three floors could be used in connection with dress making, subject to a prohibition against any show of business being visible from the exterior.

13. The commercial use of the lower three floors continued until about 1990, since when those floors have been vacant. The residential use of the upper floors continued a little longer but ended well before October 2003, and quite possibly by 1995, save that a caretaker may have occupied the top floor until about 2001. Although there was evidence as to the planning history of the property, it quite rightly played no part in the parties' arguments, particularly as there is no question of any of these uses being or having been unlawful.

14. I turn to the physical state of the property. The Judge had the benefit of scaled floor plans and of photographs taken of many parts of the interior around 14th October 2003. The floor plans showed the internal layout of the property, which appeared to be substantially appropriate for a house in single occupation built 275 years ago, and identified its gross internal area as just over 1000 square metres. The photographs showed that the rooms on the three upper floors had been, at least to a very great extent, stripped back to the basic structure. Thus,

most of the plaster had been hacked off the main walls, so that one could see the bricks of the outside walling; the ceilings had in many places been removed, so that one could see the underside of the joists and the flooring of the rooms above, and, on the top floor, the roof space; in some rooms, the floorboards had been removed. In effect, it looked as if the top three floors had been virtually stripped back to their outer skin, although the staircases, internal walls, and floor joists (and, in some rooms, the ceilings and floor boards, and even some light fittings and pieces of carpet) had not been removed. There was less evidence about the state of the lower three floors, but they do not appear to have been stripped out, and, indeed, the doors, carpets, wiring and light fittings seem to have been retained at least on the ground floor.

15. It is clear that to be a "house" for the purposes of section 2(1), a property must satisfy two requirements, namely (a) it must be "designed or adapted for living in", and (b) it must be "reasonably so called" – i.e. it must reasonably be called a house. The Judge concluded the property was not a house within the meaning of Section 2 (1), because it was not, as at October 2003, "designed or adapted for living in". Had he not reached that conclusion, he said that he would have accepted that it could "reasonably [be] called" a house. The Court of Appeal agreed. Before turning to the question of whether the property was designed or adapted for living in, it is right to record that, in the light of the reasoning of this House in *Tandon v Trustees of Spurgeons Homes* [1982] AC 755, the Judge was plainly correct to conclude that the property could reasonably be called a house.

16. Grosvenor's case is that the property was not, as at October 2003, "designed or adapted for living in", because it was not physically fit for immediate residential occupation. That was accepted by both courts below. The Judge said, in para 29 of his judgment, that the words "designed or adapted for living in" carried with them a notion of premises with "somewhere to sleep, to cook, to wash and simply to be when not out at work or out otherwise, and, depending on the size of the place, that is commonly provided by a bedroom, kitchen, a bathroom and WC and maybe a living room of some kind". In para 6 of his judgment in the Court of Appeal, Laws LJ (with whom Tuckey and Carnwath LJJ agreed) described the three upper floors as: "unoccupied and very dilapidated [and] incapable of being occupied as residences", and in para 19 he said that "because of the grave dilapidation apparent from the photographs the upper floors of the [property] were not at the [relevant time] designed or adapted for anything".

17. While I accept that for present purposes one is largely concerned with the physical state of the property, I disagree with these conclusions. It seems to me that, as a matter of ordinary language, reinforced by considering other provisions of the sub-section, and supported by the original terms of section 1(1), as well as by considerations of practicality and policy, the property was, as at October 2003, "designed or adapted for living in" within section 2(1). The fact that the property had become internally dilapidated and incapable of beneficial occupation (without the installation of floor boards, plastering, re-wiring, re-plumbing and the like) does not detract from the fact that the property was "designed…for living in", when it was first built, and nothing that has happened subsequently has changed that. While internal structural works will no doubt have been carried out to the property from time to time over the past 275 years, it seems very likely from the floor plans that its layout, in terms of internal walls, partitions and staircases, has not changed much since the property was built. In any event, the upper three floors have always been laid out for residential use.

18. In my judgment, the words "designed or adapted for living in", as a matter of ordinary English, require one first to consider the property as it was initially built: for what purpose was it originally designed? That is the natural meaning of the word "designed", which is a past participle. One then goes on to consider whether work has subsequently been done to the property so that the original "design" has been changed: has it been adapted for another purpose, and if so what purpose? When asking either question, one is ultimately concerned to decide whether the purpose for which the property has been designed or adapted, was "for living in".

19. The notion that the word "designed" in section 2(1) is concerned with the past is reinforced by the later words in the same section "was or is solely designed or adapted…". The use of the past tense is striking in a section which contains a number of verbs only in the present tense. In my judgment, the expression is to be construed distributively: thus, the word "was" governs "designed", and the word "is" governs "adapted". The present tense is appropriate for "adapted" because, as my noble and learned friend Lord Scott of Foscote pointed out in argument, there could have been several successive adaptations, and it is only the most recent which is relevant. The word "was" is in any event difficult to reconcile with Grosvenor's case (as accepted by the Judge and the Court of Appeal), as it would be irrelevant whether the property could have been fit for residential occupation at any time in the past.

20. Furthermore, the notion that section 2(1) is concerned with whether a property could be physically lived in sits rather ill with the fact that section 1(1), as originally enacted, required, in every case of enfranchisement, the tenant to have occupied the house as his only or main residence. The requirement that a property be in such a physical state that it can be lived in seems somewhat arid and valueless if there is a requirement that it is, and has been, actually lived in.

21. I also find it hard to see what policy considerations would have driven a requirement that a property be fit to live in before a tenant could enfranchise, especially if, as mentioned, there was an actual residence requirement anyway. I can, however, discern a reason for having a requirement that a property must either have been originally designed for living in, or must subsequently have been physically adapted for that purpose. The legislature may well have thought it inappropriate to deprive a person of his freehold under the 1967 Act unless he (or his predecessor) (a) had built it, or permitted a tenant to build it, for living in, or (b) had subsequently permitted it to be adapted for living in.

22. Furthermore, the issue of whether a property is fit for immediate residential occupation, the test adopted by the courts below, could easily lead to arguments and uncertainty. As the words I have quoted from the first instance judgment reveal, it may be a matter of debate whether a particular property is so fit if it has no bathroom or no kitchen, or if there is no sitting room. The resolution of such an issue would inevitably be a matter of subjective opinion in many cases. Also, it appears that a tenant's notice would be invalidated if it happened to have been served on a day when he was having his only bathroom refitted: the property would not have been fit for immediate occupation on that day, as it had no usable washing and toilet facilities. Of course, the answer to this may well be that one does not treat the property as physically "frozen" on the relevant day. However, once one departs from the strict test of fitness for immediate residential occupation, the uncertainties multiply. No such difficulties, as I see it, are likely to arise if the words in question are given their natural meaning.

23. I have referred to, and relied on, the residence requirements in section 1(1) in its original form. In the Court of Appeal at para 25, Carnwath LJ said that he was inclined to think that no assistance could be gathered from provisions in the 1967 Act as originally enacted, because one should construe the 1967 Act in its current form. Consequently, he considered that no help in construing section 2(1)

could be gathered from the residence requirement of every enfranchisement claim originally contained in section 1(1). I do not agree. In *Suffolk County Council v. Mason* [1979] AC 705, Lord Diplock said at 714E that certain "provisions … have since been amended by the Countryside Act 1968: but this cannot affect the construction of the Act of 1949 as it was originally enacted". There are earlier observations to similar effect from Bramwell and Brett LJJ at 227 and 229 in *Attorney General v. Lamplough* (1878) 3 Ex D 214. In my opinion, the legislature cannot have intended the meaning of a sub-section to change as a result of amendments to other provisions of the same statute, when no amendments were made to that sub-section, unless, of course, the effect of one of the amendments was, for instance, to change the definition of an expression used in the sub-section.

24. Having explained why I take a different view from the courts below of the words in issue, I revert to the facts of the present case, albeit at the risk of repetition. The property was designed for living in when it was first built in the 1730s, and, with the exception of the last ten years or so, all or at least half of the property, namely the upper three floors, has been used and laid out for residential purposes. Indeed, the layout of all six floors of the property does not appear to have been substantially altered from its original construction as a house in single residential occupation. It is true that it has not been occupied for a number of years, that it has become very dilapidated, and that three residential floors have been stripped out to the basic structural shell (albeit that the internal walls, windows, staircases, and joists are in place). However, none of that detracts from the point that at least the upper three floors were and remain "designed" to be lived in, and that the lower three floors appear to be structurally laid out substantially as they were when the property was in single residential occupation, and, as pointed out by my noble and learned friend, Lord Rodger of Earlsferry in argument, they are (or, at least the ground floor is) still internally fitted out in a way which gives a residential appearance.

25. There are two further points concerning the words "designed or adapted for living in" I should mention. The first relates to the facts of this case, and the second is more general. On the facts of this case, I have concentrated on how the property was originally "designed", but it is arguable that it was "adapted" in the 1940s. It is unnecessary to resolve the point, because, if it was so adapted, it was an adaptation for mixed business and residential purposes. In other words, the property would have been adapted for business use on the lower three floors and "adapted for living in" on the upper three floors. It is clear from section 2(1) that, in order to be a "house", the property need not be "solely"

adapted for living in, so it would make no difference to the outcome of this appeal if that were the correct analysis. The issue was, unsurprisingly, not much debated, but I incline to the view that the original design of the property is what matters in this case. Its original internal layout as a single residence appears to have survived substantially unchanged throughout, the three upper floors have always been envisaged as being for "living in", and (perhaps less importantly) the internal fitting out of the lower three floors has a residential character, and the external appearance has not been altered since well before the property ceased being used as a residence in single occupation.

26. The second further point concerning the words "designed or adapted for living in" is whether a property would be a "house" if it had been designed for living in, but had subsequently been adapted to another use. As a matter of literal language, such a property would be a house, because "designed" and "adapted" appear to be alternative qualifying requirements. At least at first sight, such a conclusion seems surprising, so there is obvious attraction in implying a qualification that, if a property has been, and remains adapted for a purpose other than living in, the tenant cannot rely upon the fact that it was originally designed for living in. However, a term is not easily implied into a statute, and further reflection suggests that the literal meaning of the words is not as surprising as it may first appear, particularly bearing in mind the existence of the residence requirement in section 1(1) of the original Act. It is unnecessary to decide this point, and, particularly as it was only touched on in argument, I do not think we ought to do so.

27. In all these circumstances, I would allow this appeal, on the ground that 21 Upper Grosvenor Street London W1 was "designed or adapted for living in" within the meaning of section 2(1) of the 1967 Act.