A case considering the ability of the Secretary of State for Defence to enfranchise houses under the Leasehold Reform Act 1967 (R on behalf of Annington Property Ltd v Secretary of State for Defence)

Property Disputes analysis: This decision relates to an application for judicial review in the Administrative Court heard together with a claim for declaratory relief in the Chancery Division. The applications were made by Annington Property Ltd (APL) and related companies (together 'Annington') who had entered into a sale and leaseback agreement with the Secretary of State for Defence ('the MoD') of a portfolio of properties used to house military families. The issues raised by Annington are numerous and complex but all centred around a challenge to the ability of the MoD to serve enfranchisement notices under the Leasehold Reform Act 1967 (LRA 1967) and the lawfulness of the exercise of those rights on public law grounds. The court ruled that the MoD was entitled to enfranchise and had acted lawfully in doing so. Written by Caroline DeLaney, partner at Stevens & Bolton LLP.

R (on the application of Annington Property Ltd) and others v Secretary of State for Defence [2023] EWHC 1154 (Admin)

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What are the practical implications of this case?

The judge dismissed all Annington's claims both in civil law and in public law. The court held that the enfranchisement notices served by the MoD were valid under LRA 1967 and rejected the claims for judicial review of those notices on the basis that the MoD had acted lawfully in seeking to exercise its statutory rights.

The decision considers complex questions involving the application of LRA 1967 and Part II of the Landlord and Tenant Act 1954 (LTA 1954) both in the private law and in the wider context of the judicial review and how those principles apply to government departments. It is the first time that a number of the points under LRA 1967 have come before the court.

The case illustrates starkly the myriad of additional considerations that come into play when private parties contract with public bodies and in dealings involving residential properties, even when the dealings are concluded on a commercial basis.

As such, the case contains much of interest to public law practitioners and to property practitioners alike.

What was the background?

In 1996, the MoD entered into a complex sale and lease-back transaction with Annington of 55,000 dwellings used to house military service personnel. The properties were spread over 765 sites in England and Wales. Each site was subject to a 999-year headlease which was transferred to Annington with underleases for a term of 200 years then granted back to the MoD at a discounted market rent. The underleases were subject to 25-year site rent reviews and a right to terminate in favour of the MoD on six months' notice. The price paid by APL was £1.662bn.

At the time the MoD thought the deal struck represented good value for money; however subsequent inquiries by, among others, the National Audit Office, concluded it did not. To address this, the MoD considered a number of strategies to limit its liabilities, one of which was enfranchisement coupled with renegotiation. In anticipation

of pursuing this strategy, the MoD set up a special purpose vehicle (SPV) known as Defence Infrastructure Holdings Ltd (DIHL), to which it transferred the freehold of a number of test properties between December 2021 and April 2022. It also granted long leases of the common parts of Cranwell to DIHL.

Following the completion of a number of complex (and costly) rent review awards, Annington and the MoD reached a settlement which was signed in December 2021. The MoD then served notices on Annington under LRA 1967, s 5 to enfranchise eight houses.

Annington challenged the notices on numerous grounds by way of declaratory proceedings in the Chancery Division and proceedings for judicial review in the Administrative Court. The claims were heard together.

What did the court decide?

There were multiple grounds upon which the notices were challenged and which raised a number of novel questions involving both LRA 1967 and LTA 1954. The (private) property law points raised in the Chancery proceedings overlapped in many respects with the public law points argued by Annington.

In summary (and it is very much a summary given the lengthy judgment) the points can be distilled as follows:

1. Was the consent of Annington required for enfranchisement?

No. The scope of the Crown application provisions in s.33 of the 1967 Act and s.88 of the Leasehold Reform, Housing and Urban Development Act 1993 meant that the right to enfranchise had arisen and so the enfranchising undertenant did not have to rely on the Crown undertaking for which the consent of the superior landlord was required.

2. Did the principle in Gratton Storey v Lewis (1987) 19 HLR 546 apply, meaning that an undertenant cannot enfranchise where the undertenant also owns the freehold?

No. DIHL was a separate entity to the Crown (as the MoD).

3. Were the subtenancies business tenancies pursuant to LTA 1954, Pt II in which case the right to enfranchise would be excluded?

No. The court considered, among other things whether the MoD (as a government department) had the protection of LTA 1954, s 56(3) and (4), the application of the business occupation test in LTA 1954, s 23 and the principles of occupation laid down in *Graysim Holdings Ltd v P&O Properties Holdings Ltd* [1996] AC.

4. Did LRA 1967, s 1AA apply meaning that where the house was bordered by non-residential land in a designated rural area it was excluded from the right to enfranchise?

No. This would only be relevant to two of the eight houses and, in any event, did not apply where the dwellings were clearly part of a housing estate.

The court concluded that all eight notices were validly served based on the analysis of the various arguments set out in 1–4 above. It then went on to consider the public law challenges.

5. Did service of the notices to enfranchise amount to the exercise of compulsory purchase powers?

No. LRA 1967 is not analogous to an exercise of a power of appropriation requiring an authority to act reasonably. It was accepted that in certain circumstances a public body exercising private rights may be subject to challenge where the exercise of those rights was tainted by improper motives, but generally there was no scope for the application of public law principle. Similarly, the manner in which the rights were exercised was not legally improper. There was no breach of legitimate expectations and no breach of Article 1 of the First Protocol to European Convention on Human Rights.

In short, Mr Justice Holgate dismissed Annington's claim on all grounds, holding that the enfranchisement notices served by the MoD were valid notices under LRA 1967 and rejected the claims for judicial review of the decision to serve those notices.

Case details

- Court: King's Bench Division (Administrative Court)
- Judge: Mr Justice Holgate
- Date of judgment: 15 May 2023

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