

Defending leaseholder rights to acquire ‘common parts’



Queen Court is a block of 45 flats in West London. It includes a basement part of which contains installations servicing those flats. As well as basement subsoil and airspace for access to the roof. With property in West London, and many urban areas, at a premium it was important to establish whether the leases for the basement and airspace could be acquired as part of collective enfranchisement claim.

The challenge: untangling the letter of the law

The freeholder had granted leases of the airspace, basement and subsoil to third party entities permitting (subject to planning) the development of those areas to provide additional residential accommodation in return for substantial premiums.

The case of *LM Homes Ltd and Others v Queen Court Freehold Company Ltd* [2002] EWCA Civ 371 involved complex and novel questions of law namely:

- What is the meaning of common parts?
- To what extent to can the acquisition of the freehold and intermediate interests be transacted separately?

Our approach: defining ‘common parts’

Our team applied detailed insight into the Leasehold Reform, Housing and Urban Development Act 1993 to provide sophisticated strategic and tactical advice to the company set up by the leaseholders to act as nominee purchaser. We dealt with the issue of what constitutes “common parts” of the building which the leaseholders are entitled to acquire notwithstanding that they did not have access to those areas.



The outcome: tenants' collective rights

During an appeal by the landlord in the Upper Tribunal, we successfully argued that the leaseholders, who had exercised the right to collective enfranchisement, should be entitled to acquire leases of the airspace, subsoil and parts of the basement of the relevant premises. An appeal against that decision was dismissed by the Court of Appeal.

How we made a difference

Our expertise combined with our intimate knowledge of London real estate enabled our client's success at the Court of Appeal. This case has also received widespread industry attention as it changes how freehold investors and developers scope future residential development.