

The meaning of a 'live/work' lease



A recent judgment in the Court of Appeal has clarified the permitted use of properties for leaseholders who are restricted by a 'live/work' covenant. The judgment in *AHGR v Kane-Laverack* [2023] EWVA Civ 428 ruled that it is not necessary to work in a 'live/work' flat, and that the phrase means to "live and/or work".

The Court of Appeal had to determine if the covenant meant that the leaseholders had to both live and work in the flat, or if they were able to either live and/or work in the premises. The Court reviewed the lease and the relevant planning permissions, and concluded that there was nothing that required the leaseholder to occupy the flat for both uses. The freeholder's appeal was accordingly dismissed by the Court.

The facts

The case concerned a leasehold flat in a Bermondsey development consisting of 13 business units, 14 residential units and one 'live/work' unit. Interestingly, had the 'live/work' unit been developed as a residential unit under the planning permission, the developer would have met the criteria for Affordable Housing. However, this threshold of purely residential units was not met as the lease of the flat in question contained a clause restricting the use of the premises to a 'live/work' unit in accordance with planning permissions.

The leaseholder acquired the property in 2009 and used it as a dwelling until 2014, following which the leaseholders carried out some of their work from the flat as a barrister and as a GP. The freeholder was of the view that the leaseholders were using the property as a dwelling only and accordingly brought proceedings against the leaseholders.

Planning permission and supplementary planning guidance

An important factor in the decision was the planning permission granted for the development and the relevant planning guidance.

Planning permission for the flat was granted in 2001. During the process of obtaining planning permission several plans were submitted, with the final floor plan of the flat including the whole premises marked as a live/work area. The freeholder attempted to rely on an old plan submitted earlier on in the process which showed separate areas delineated for the work and living area, together with the Supplementary Planning Guidance issued by the London Borough of Southwark, where the flat was situated. The guidance stated that 'live/work' meant to both live and work, but that the workspace should be identified on drawings and physically delineated from the residential element.

The decision

Both the County Court and High Court on appeal ruled in favour of the leaseholders, and held that the restrictive covenant meant that they could live and/or work at the flat.

Lord Justice Dingemans judgment highlighted the courts' reluctance to use extrinsic documents when interpreting public documents such as planning permissions. The court considered that a reasonable reader of the planning permission would not have regard to the Supplementary Planning Guidance as it was not incorporated into the planning permission, or referred to. The Court of Appeal confirmed that the guidance could not be relied upon.

The judgment made clear that the 'live/work' phrase is ambiguous and could mean either 'live and work', 'live or work' and 'live and/or work'. Lord Justice Dingemans also stated in the judgment, that the consequences of breaching planning permissions can give rise to criminal proceedings, and that given the severity of this, the planning permission would have been much less ambiguous if it was required for the leaseholders to live and work at the premises. The judgment also noted that the second plan submitted with the planning application, described the area as 'live/work space' and did not divide the flat into separate living and working areas as required.

The case highlights the courts' lenience to tenants when interpreting ambiguous language, and confirms the need for clear and precise language when drafting leases and legal documents. The judgment also brings reassurance to leaseholders who are using a 'live/work' flat solely as residential premises.



[Sophie Campbell](#)

Associate