

**ALEP**

ASSOCIATION OF LEASEHOLD  
ENFRANCHISEMENT PRACTITIONERS

# ALEP AUTUMN CONFERENCE 2010

Ellodie Gibbons  
Tanfield Chambers

# Ellodie Gibbons

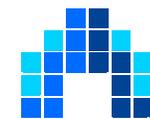
- Legal Loopholes in Enfranchisement
- Recent decisions



# Qualification under the '67 Act

By virtue of section 2(1) a 'house' is a building, which:

- is designed or adapted for living in;
- can reasonably be called a house;
- does not have to be detached;
- may be divided horizontally into flats or maisonettes;  
and
- is not divided vertically.



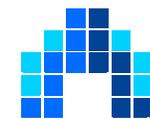
# Business Tenants

## General rule

tenants of business tenancies within the meaning of Part 2 of the *Landlord and Tenant Act 1954* do not have a right to acquire the freehold.

## Exceptions - sections 1(1ZC) and (1ZD)

- The tenancy is for a term of more than 35 years; and
- The tenant has been occupying the house, or any part of it, as his only or main residence for the last two years or for periods amounting to two years in the last ten years. (ss.1(1ZC) and (1B)).



# Vote

Should business tenants be able to acquire their landlord's freehold?

A. Yes

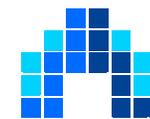


B. No



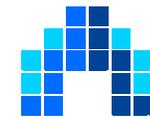
# The '54 Act

*23 - (1) Subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes.*



# *Day v. Hosebay*

- Three terraced properties, originally constructed and occupied as large houses
- Hosebay Ltd, as tenant, occupied the properties for the purposes of a business, 'Astons Apartments'
- Astons Apartments provides short term accommodation for tourists and other visitors to London
- Hosebay sub-let the houses to Hindmill Ltd, an associated company



# Issues

The underleases were not shams, therefore, were the properties -

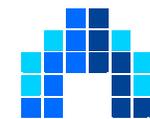
(1) designed or adapted for living in; and

(2) houses reasonably so called



# Issue 1

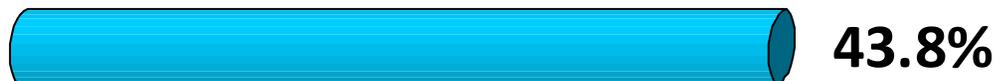
- Each of the properties was “designed...for living in”
- That was not sufficient
- Look at the most recent works
- Assess, objectively, whether they resulted in the property being adapted for living in
- Each of the houses was adapted for living in even if that was not their current use



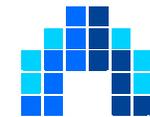
# Vote

Should either “designed” or “adapted” be sufficient?

A. Yes



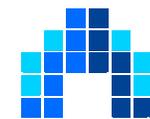
B. No



# Issue 2

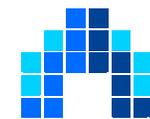
The question whether a building is a “house...reasonably so called” is to be determined essentially by reference to its external and internal physical character and appearance

All the subject properties were houses reasonably so called



# *Prospect Estates*

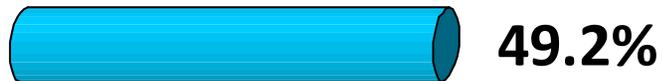
- Building built as a residential house
- Essential structure of remained unchanged
- The lease stipulated that 88.5% of the building was to be used as offices and 11.5%, or one storey, was to be used as a residential flat
- Not a house reasonably so called



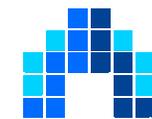
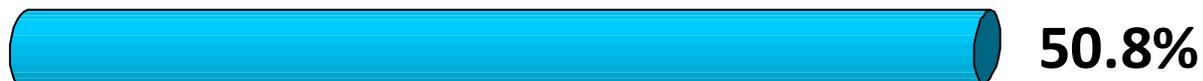
# Vote

Was the decision in Hosebay the correct one

A. Yes



B. No



# Vote

How should the issue of business tenants be addressed?

- A. business premises are not designed or adapted for living in  
 **23.5%**
- B. business premises are not houses reasonably so called  
 **40.9%**
- C. business tenancies should not be defined by reference to the '54 Act  
 **15.2%**
- D. an artificial sub-letting is a sham  
 **10.6%**
- E. some other answer  
 **9.8%**



# Other loopholes

## LRHUDA 1993

Section 5(5) – no qualifying tenant where one tenant owns more than two flats

Avoided if lease is transferred e.g. to a trustee



# Vote

Choose one:

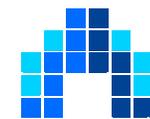
A. There should be no restriction in section 5(5)



B. The status quo should remain

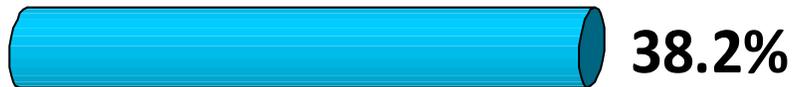


C. The loophole should be closed

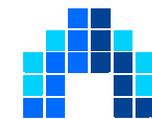


# Supplementary vote Should we restore the residency provision?

1. Yes



2. No



# Recent Cases

- *41 – 60 Albert Place Mansions (Freehold) Ltd v. Crafrule Ltd* [2010] EWCA Civ 1230
- *Ashdown Hove Ltd v. Remstar Properties Ltd (2010)* (2010) 37 EG 138
- *HILMI & Associates Ltd v 20 Pembridge Villas Freehold Ltd* (2010) (2010) 3 All ER 391
- *Grosvenor Estate Belgravia v (1) Craig Wayne Klaasmeyer (2) Ashley Dierker Klaasmeyer* (2010) (2010) 16 EG 107 (CS)
- *(1) Earl Cadogan (2) Cadogan Estates Ltd v (1) Alexander Dimitris Nicholas Panagopoulos (2) John Matthew Stephenson* (2010) (2010) L & TR 13

