

ALEP

ASSOCIATION OF LEASEHOLD
ENFRANCHISEMENT PRACTITIONERS

ALEP AUTUMN CONFERENCE 2010

Syndicate 2

Material Enhancement

Led by Mark Chick and Gavin Buchanan

Syndicate 2 Feedback

Key Issues discussed:

- What is material enhancement? – *Essentially it is the factor that determines the extent to which a freeholder can impose obligations contained in the lease (or leases) of a property in the transfer of the freehold on enfranchisement either under the 1993 Act or the 1967 Act*
- In order for this to apply the freeholder must own neighbouring property which can benefit from the restriction
- Tends therefore to apply to PCL and the 'Great Estates' but can apply in any situation where the freeholder has adjacent property



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- The leading case is that of *Moreau* – a decision of the Lands Tribunal from 2003 – *Eric Moreu v Howard de Walden Estates Ltd* (LRA/2/2002) Gavin Buchanan was the tenant's expert in that case
- The test is not whether there would be a diminution in value in the neighbouring property rather that by having the restriction the other property would be 'materially enhanced'
- Whilst the decision in this case went against the tenant, the issues raised are of general importance – there are a number of other pending cases – and would merit being dealt with by the Court of Appeal so that there is greater certainty in this area for both landlords and tenants



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Practitioners' view on question of material enhancement

Only 10% of group felt very confident with these issues

Mainly a central London issue (although there is a recent case of interest, Grove Road in Bournemouth) – CH1/00HN/OLE/2008/0001 and 0002

In this case an application made for leave to appeal, but this was refused.

Of general interest as the principles can apply anywhere provided that the freeholder has neighbouring property that can benefit from the restriction(s)



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Practical problems

- The terms of the transfer are not always agreed early on – but attention needs to be given to this as this may be central to valuation matters – particularly if these sorts of issues arise
- The valuer cannot agree premium until terms of transfer agreed
- When advising those looking to buy freeholds where this sort of issue is likely to apply it is important to consider in detail the kinds of restrictions that may be placed on the property with the client



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There have been / are a number of cases where landlord is saying house is probably worth more as a house than flats and should be entitled to a share of the value

The current thinking is that anyone taking issues of restrictive covenants to the LVT unlikely to succeed because of Moreau ruling.

There are some current cases on the Sir John Lyons' Estate concerning restriction against the reconversion of a property used as flats into a house



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- If you accept a transaction with a covenant and then want to challenge it down the line, then you could perhaps later apply to lift the covenant ?
- You could possibly agree onerous terms and then take the decision to the Lands Tribunal for release after the event under the 1925 Act but the LT will take a dim view of an application to release a covenant made shortly after it has been agreed



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Following Moreau, from tenant's viewpoint the issues in this case should be addressed in a future case in the Court of Appeal.

At the moment landlords are happy as decision helps them.

GB— sometimes we practitioners are slack as to the extent to which they deal with the details of the transfer. Learnt lesson of importance of considering the lease. Section 13 – make clients aware that there are restrictions which may be transferred at the point of purchasing freehold.

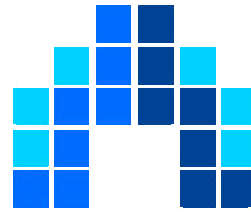


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Current Cases

- 87 Hamilton Terrace
- 39 Cadogan Square
- 38 Wilton Crescent





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