

## Landlord's consents and planning permission

**Kate Olley**  
**Landmark Chambers**  
**10<sup>th</sup> May 2018**

## Two hurdles



- Local Planning Authority- planning application
- Landlord- consent requirement under the lease
- LPA position- will only grant consent if PP been granted by the LPA, not on appeal

*Rotrust Nominees Ltd v Hautford Ltd (A Company registered in the BVI) [2018] EWCA Civ 765*



- T wished to apply for PP for change of use for 2 of 6 floors
- User clause- shop, offices, residential, storage, studio: cl 3(11)
- Lease- T's covenant not to apply for PP without prior written consent of landlord, not to be unreasonably withheld: cl 3(19)
- L refused consent- reason: would increase T's prospect of acquiring the freehold under the Leasehold Reform Act 1967
- Undermining of L's wider control of the estate
- T motive was to enfranchise

## Trial judge



- Purpose of cl 3(19) not to enable L to restrict or limit the permitted use under cl 3(11)
- In refusing consent, L had sought to achieve the collateral purpose of imposing a restriction on use that was not included in cl 3(11)

## L submitted



- Requirement cl 3(19) to obtain consent to a planning application was to protect the L from damage to the reversion- as with requirement for consent to change of use, assignment, subletting and alterations
- One purpose of the proposed planning application was to improve T's chances of acquiring the freehold through enfranchisement- accepted
- Therefore impossible to conclude that L's refusal outside the range of reasonable responses

## Court of Appeal



- No reported cases on the reasonableness of L's refusal to consent to T's application for PP where consent for the application was required
- The applicable general principles were the same as applied re T's covenant not to assign or sublet without L's permission (such consent not to be unreasonably withheld)
  - Followed *Bromley Park Garden Estates Ltd v Moss* [1982] 1 WLR 1019
  - *International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd* [1986] Ch 513
  - *Iqbal v Thakrar* [2004] EWCA Civ 592

## Test of reasonableness



- Objective
- Starting point- ascertain purpose of cl 3(19) as intended by the parties: obviously to protect L's property interests
- Reasonableness of withholding consent- would depend on precise circumstances at particular moment in time- must be judged as at the time of the application

## Outcome



- Purpose of cl 3(19) did not include precluding the residential use of 1<sup>st</sup> and 2<sup>nd</sup> floors in order to prevent enfranchisement of the property
- Cl 3(11) expressly authorised use of the entire property as residential – could not be read subject to proviso that those parts not then or thereafter in residential use could not be without L’s consent
- That would be a re-writing of the clause and also manifestly impractical way of limiting the express authorisation of residential use- anybody could apply for a change of use
- Inconceivable original parties intended to create situation where T precluded from applying for change of use for the entire term (100 years)- a third party could apply and T take the benefit of them having done so
- Increase in T’s prospects of enfranchisement irrelevant