

Collective Enfranchisement
Nuts and Bolts:
**Requirements for a collective
claim**

Matthew Dale-Harris

mdharris@landmarkchambers.co.uk

Overview



- A. INTRODUCTION
 - B. PREMISES TO WHICH THE ACT APPLIES
 - i. What is a self-contained building?
 - ii. What is a self-contained part of a building?
 - iii. Excluded premises
 - C. FLATS AND TENANTS
 - i. Flats qualifying
 - ii. Qualifying tenants
 - iii. Who is the Qualifying Tenant?
-

A: INTRODUCTION

$\frac{L}{C}$

- the qualifying test (s.3(1))
 1. A self-contained building or part of a building
 2. Two or more flats held by QTs
 3. Total number of flats held by QTs is not less than two-thirds of the total :
 - eg. if 10 flats; 7 must be held by QTs.

Initial thought

$\frac{L}{C}$

- Tenants may have a choice about the extent of the premises which they seek to enfranchise
- This needs to be sorted before issuing the initial notice

B: PREMISES TO WHICH THE ACT APPLIES

$\frac{L}{C}$

- “A self-contained building or part of a building”
- Self-contained building
 - is “a” building, i.e. cannot use a single claim to acquire multiple buildings
 - is “structurally detached”

B(i) Self-contained part of a building

$\frac{L}{C}$

- “Structurally detached” can cause difficulties
 - Same structure may be regarded as both a single building or several (Malekshad v Howard de Walden [2003] 1 A.C. 1013)
 - See RTM cases:
 - No.1 Deansgate (Residential) Ltd v No. 1 Deansgate RTM Co Ltd [2013] UKUT 580 (LC)
 - Albion Residential v Albion Riverside RTM Co Ltd [2014] UKUT 6 (LC).

No.1 Deansgate

$\frac{L}{C}$



Decision

$\frac{L}{C}$

- “Structurally detached does not mean “wholly detached”
- Attachment on the facts did not matter as was not structural

Albion Riverside

$\frac{L}{C}$



Decision

$\frac{L}{C}$

- Tribunal rejected submission that building comprises only structure above ground level
- Structural detachment was a question of fact
- Here, the ground and basement floor slabs were major and integral components of the Building, car park, piazza and neighbouring block.

B(ii) Self-contained part of a building



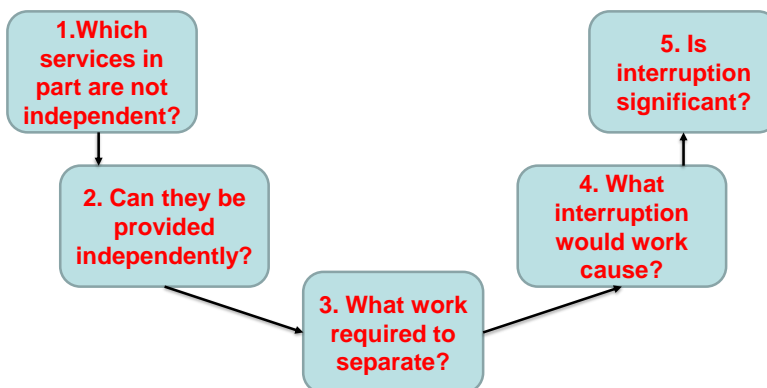
1. Vertical division: single plane of division from top to bottom
(May give rise to a choice if building could be divided in different ways: Crafrule [2011] EWCA Civ 185)
2. Structure of building is such that the part could be redeveloped independently
3. Relevant services are or could be provided independently:
Oakwood Court (Holland Park) v Daejan [2007] 1 EGLR 121



Can services be provided independently?



- Five step test:



St Stephens Mansions RTM Co Ltd v Fairhold NW Ltd [2014] UKUT 541

L
C

- 2014 example
 - Two neighbouring locks. Expansion joint between them
 - Built separately and capable of independent redevelopment
 - However,
 - Single mains water supply/meter which went to a single pump house
 - Pipe then divided to two holding tanks, then sent pressurised water into single outflow which divided into two branches (for each block)

Oakwood applied

L
C

1. Water not presently supplied independently
2. Could be supplied independently but separate metering would not meet test. Service was “supply of water”.
3. Installation of separate tanks pumps would allow separate supply.
4. Interruption would be relatively limited.
5. Was not significant.

B(iii) Excluded premises

$\frac{L}{C}$


- Two exclusions:
 1. Premises of which any part or parts which are neither:
 - Occupied or intended to be occupied for residential purposes; nor
 - Comprised in the common parts

exceeds 25% of the internal floor area of the premises
(disregarding any area that is within common parts)

2. Resident Landlord
- 

Common parts (s.101(1))

$\frac{L}{C}$

- Non-exhaustive definition
 - “in relation to a building or part of a building, includes the structure and exterior of that building or part and any common facilities within it”
 - It is a test to be applied at the relevant date, not simply a matter of looking at the lease
 - Not necessary to be common to all
 - Not necessary to have access
- 

Some examples



- Caretakers flat – Yes
 - Vacant parking spaces – No
 - Corridors leading only to commercial areas – Yes
 - Boiler rooms etc – Yes
 - Parking space for managing agent – No
 - Unallocated storeroom - No
-

Resident Landlord



- Building must not be a purpose built block of flats
- If LL has:
 - Owned FH since before conversion to two or more flats;
 - and
 - He or adult member of family has occupied as only or principal home for previous 12 months

Then he will be a resident landlord.

C: FLATS AND TENANTS



- Limbs (2) and (3) of the qualifying test in s.3(1) [see earlier slide] require two calculations:
 - “two or more flats” held by Qualifying Tenants (“QTs”)
 - Flats held by QTs are “not less than two-thirds” the total number of flats
- For both we need to understand and apply definitions of:
 - QTs
 - Flats

C(i) Flats



s.101:

“a separate set of premises (whether or not on the same floor) -

(a) which forms part of a building, and

(b) which is constructed or adapted for use for the purposes of a dwelling, and

(c) either the whole or a material part of which lies above or below some other part of the building”

“Separate” premises

$\frac{L}{C}$

- Cadogan v McGirk [1996] All ER 643.
 - Nicholls LJ held that it “separate” was concerned with the physical layout of the premises.
 - Did not need to be contiguous, question was one of fact and degree and would be largely a matter of impression: was the premises something that could be regarded as a single separate set?
-

“Constructed or adapted for use for the purposes of a dwelling”?

$\frac{L}{C}$

- Farndale Court: collection of bedsits around shared kitchen facilities was a flat.
 - Smith v Jafon: serviced apartments were being used as short term business lets, not flats. Intention since last adaptation had been to use them for short term rental rather than dwelling; although their physical features would have allowed long term residence.
-

C(ii): QUALIFYING TENANTS

$\frac{L}{C}$

- QT's are:
 - The tenant of a flat under a long lease: s.7.
 - Exceptions are:
 - Persons who would be multiple QTs
 - Business tenancies
 - Unlawful subleases
 - Charitable leases

Who is the QT?

$\frac{L}{C}$

- What is there are two long leases of a flat?
- A headlessee of the whole of the building may be a QT if there are directly held flats or caretaker's flat: Howard de Walden v Aggio
- This may effect the thresholds: Crean [1998] 2 EGLR 96.



D: Conclusion

$\frac{L}{C}$

- Pay careful attention to the statutory language
- Consider carefully how to define the premises
- Pitfalls emphasise the importance of carefully considering the initial notice.



$\frac{L}{C}$

Landmark
CHAMBERS

mdharris@landmarkchambers.co.uk

