

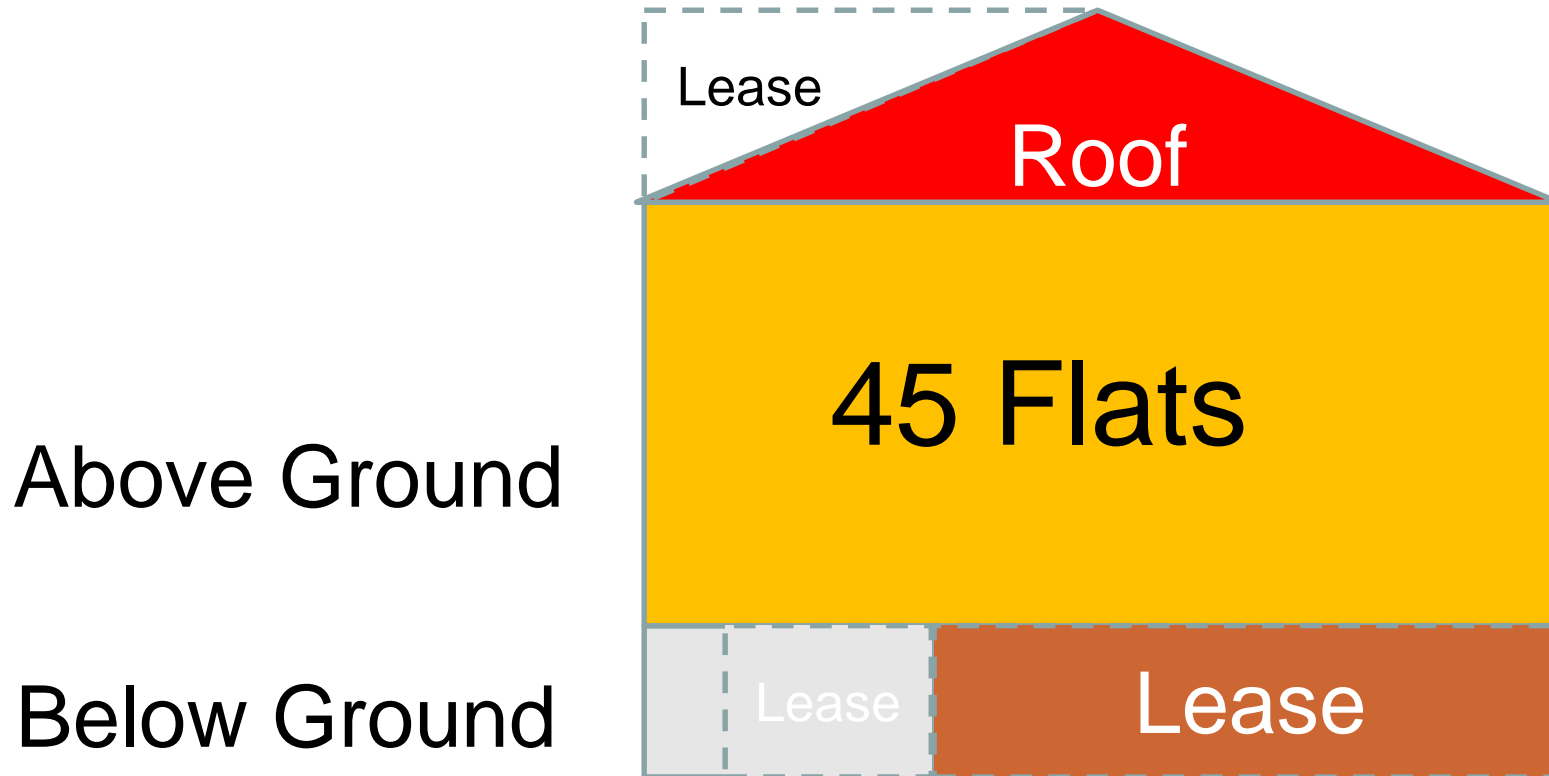
David Nicholls

Above, below, and beyond

L M Homes Limited v Queen Court Freehold Co Ltd Landmark
[2018] UKUT 367 (LC) Chambers



Queen Court



Leasehold Reform, Housing, and Urban Development Act 1993

Sections 2(1)(b) and (3)(a):

*“any **common parts** of the relevant premises”*

*“where the **acquisition** of that interest is **reasonably necessary** for the proper management or maintenance of those common parts”*

Section 101(1) defines common parts:

“in relation to any building or part of a building, includes the structure and exterior of that building or part and any common facilities within it”

What are “*common parts*”?

- Definition in s.101 is not comprehensive

Cadogan v Panagapoulos [2010] EWHC 422 (Ch); [2010] EWCA Civ 1259:

- Includes areas that are used by or benefit all the residents
- Does not require actual use by all the residents
- Not necessary for the lessees to have access

Is the basement “*common parts*”?

- Basement was part of the building
- Necessary to have regard to the function served by the area in question
- A room housing installations that were common parts is also a common part
- Absence of rights of access irrelevant
- Therefore it was common parts

Is the subsoil “*common parts*”?

- Subsoil was not part of the building
- But it was part of the exterior of the building:
 - Like airspace: *Dartmouth Court v Berisworth* [2008] L&TR 12
 - Like a rockery: *Panagopoulos*
- Plus, the subsoil has the essential attribute of providing some shared use or benefit
- Therefore, the subsoil is common parts

Is the airspace “*common parts*”?

- Airspace was either part of the building or part of the exterior of the building
- But it was part of the exterior of the building: *Dartmouth Court*
- Plus, the airspace was an essential part of the space over which the owner with repairing obligations would need to have rights of access
- The grant of the lease of the airspace is irrelevant
- Therefore, the airspace is common parts

Is the acquisition of the basement reasonably necessary?

- Necessary to have regard to the intended use of the basement – i.e. development as a flat
- What are the practical consequences of the intended use?
- Development of the basement would significantly interfere with the reasonable maintenance and upkeep of the communal heating and electrical supply
- Thus, acquisition is reasonably necessary

Is the acquisition of the subsoil reasonably necessary?

- Active management or maintenance remote
- But the lease was for 999 years – so a distinct possibility that management might be required at some point
- Reasonably necessary to management of the ground on which the building stands for the subsoil to be acquired
- Only way to ensure function performed by subsoil will not change
- Thus, acquisition is reasonably necessary

Is the acquisition of the airspace reasonably necessary?

- Reservation of rights in lease irrelevant
- Possibility of development meant repair obligations could not be fulfilled
- Plus, development would cause airspace to lose its character as airspace and cease to be common part
- Thus, acquisition is reasonably necessary

Key points

Common Parts:

- Broad definition
- Essential attribute is some shared use or benefit for all
- But actual use by all or access is not required
- Have regard to function of use or intended use

Acquisition reasonably necessary

- Focus on the correct question
- Consider consequences of intended or potential use – will it deprive that area of its characteristic as a common part?
- Need to ensure function of the common part continues
- Reservation of rights in the lease is immaterial

Thank you for listening

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Registered office:
180 Fleet Street, London
EC4A 2HG | DX: 1042 (LDE)

London

+44 (0) 20 7430 1221

Birmingham

+44 (0) 121 752 0800

Contact

clerks@landmarkchambers.co.uk

www.landmarkchambers.co.uk

 @Landmark_LC