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PRESS SUMMARY

Day and another (Appellants) v Hosebay Limited (Respondent); Howard de Walden Estates Limited (Appellant) v Lexgorge Limited (Respondent) [2012] UKSC 41

On appeal from: [2010] EWCA Civ 748

JUSTICES: Lord Phillips, Lord Walker, Lord Mance, Lord Clarke, Lord Wilson, Lord Sumption, Lord Carnwath

BACKGROUND TO THE APPEALS

These two joined appeals raise the question of whether a property used wholly for commercial purposes may qualify as a "house" for the purposes of legislation governing the right to leasehold enfranchisement (i.e. the right of a lessee in certain circumstances compulsorily to acquire the freehold of the building from his/her landlord) **[1]**. In the *Hosebay* case, the respondents owned the leases of three buildings in central London which had originally been built as separate houses as part of a late Victorian terrace **[10]**. The leases restricted the use of the houses to use for residential purposes, but on the date when the respondent served notices on the appellants under s.8 of the Leasehold Reform Act 1967 ("the 1967 Act") seeking compulsorily to acquire the freehold of the buildings, they were being used wholly as a "self-catering hotel" **[10,13]**. In the *Lexgorge* case, the respondent owned the lease of a five-storey building in central London also originally built as a house **[16]**. The terms of the lease restricted the use of the upper two floors of the building to residential flats **[18]**. On the date when the respondent served a notice under s.8 of the 1967 Act, the building was used wholly for office purposes **[17]**. The building was listed as a building of special architectural or historic interest, and English Heritage's records described it as a "terraced house" **[18]**.

The issue in both appeals was whether the properties constituted "houses" within the meaning of s.2(1) of the 1967 Act. This raised two separate but overlapping questions: (i) Were the buildings "designed or adapted for living in"? (ii) Were they houses "reasonably so called"? **[8]** Both elements of the definition were disputed by the appellants in the *Hosebay* case, but only second element of the definition was disputed by the appellant in the *Lexgorge* case **[8]**. The judge at first instance in each case concluded that the buildings were "houses" for the purposes the 1967 Act, and the Court of Appeal reluctantly upheld those decisions **[1,2]**.

JUDGMENT

The Supreme Court unanimously allows both appeals. It holds that neither property constituted a "house" for the purposes of the 1967 Act on the date when the relevant statutory notice was served. The judgment of the Court is given by Lord Carnwath.

REASONS FOR THE JUDGMENT

- The decision of the Court of Appeal was not the result intended by Parliament when, pursuant to the Commonhold and Leasehold Reform Act 2002, it removed the requirements of residence from the 1967 Act **[3-5]**. As far as possible, an interpretation of the 1967 Act which has the effect of

- The first element of the definition of "house" in s.2(1) of the 1967 Act (i.e. "designed or adapted for living in") looks to the identity or function of the building based on its physical characteristics, the second element (i.e. a house "reasonably so called") ties the definition to the primary meaning of "house" as a single residence, as opposed to, for example, a hostel or a block of flats **[9]**. Both parts of the definition need to be read in the context of a statute which is about houses as places to live in, not about houses as pieces of architecture or features in a street scene **[9]**.

- As to the first part of the definition of "house" in s.2(1) of the 1967 Act, the words "designed" and "adapted" do not constitute alternative qualifying requirements, despite the literal meaning of the provision **[34]**. Context and common sense argue strongly against a definition turning principally on historic design, if that has long been superseded by adaptation to some other use **[34]**. The words "is adapted" in s.2(1) refer to the present state of the building and do not imply any particular degree of structural change **[34,35]**. The external and internal physical appearance of a building should not be treated as determinative of whether it is a "house" for these purposes, nor should the terms of the lease be treated as a major factor **[41]**.

- The buildings in the *Hosebay* case were not houses "reasonably so called" **[43]**. The fact that they might look like houses and might be referred to as houses for some purposes was not sufficient to displace the fact that their use was entirely commercial **[43]**. It was unnecessary to decide whether the buildings were "designed or adapted for living in" **[44]**. The building in the *Lexgorge* case was also not a house "reasonably so called" because it was used wholly for office purposes **[45]**. The fact that it was designed as a house and is still described as a house for many purposes (such as architectural histories) was beside the point **[45]**.

References in square brackets are to paragraphs in the judgment