Roof Space Development: Impact on Enfranchisement Claims by Flat Owners

Whether to build on the roof of a block of apartments or flats is an increasingly prevalent query facing landlords and management companies.

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Property companies are increasingly interested in building on unused roof space. Not only can it create additional accommodation, but it can also be a source of revenue. For landlords and management companies alike, the recent case of Vectis v Cambrai will be of interest.

Why is Vectis v Cambrai of interest?

The Upper Tribunal recently considered, in Vectis Property Company Ltd v Cambrai Court Management Company Ltd[1], whether a landlord has rights to build on the roof space of a block of flats without express rights to do so in the lease. This was considered in the context of the premium payable in a collective enfranchisement claim (the process whereby leaseholders of a block of flats collectively buy out the freeholder).

What were the facts?

Cambrai Court is a block of nine flats let on tripartite long leases made between the landlord, tenants and the residents' management company (the RMC). Pursuant to those leases, the RMC had obligations to carry out maintenance and repairs to the roof.

In 2018 the landlord, Vectis Property Company Ltd, obtained planning permission to build two new flats on the roof of the building. The leaseholder tenants subsequently exercised their right to collectively enfranchise (that is, buy the landlord's freehold interest) pursuant to the Leasehold Reform, Housing and Urban Development Act 1993, with the RMC as their nominee purchaser.

The landlord admitted the right to enfranchise, and the parties agreed that the price payable for the purchase of the freehold would be £24,500, plus an additional sum for the development value to the roof space. The parties were in dispute regarding the latter amount.

The landlord argued that the value of the loss of potential future development was £203,300, whereas the RMC claimed that it had no value because there was no express right to develop the roof reserved to the landlord by the leases.

What did the Upper Tribunal decide?

The roof space was not demised to the tenants, and therefore the Upper Tribunal held that the landlord could do whatever it wanted with its own land. As such, Vectis was not prevented from adding two new flats on the roof (subject to the development not interfering with the rights of others), despite their being no express right to do so reserved to the landlord in the leases.

Consequently, the Upper Tribunal held that Vectis was entitled to be paid a fair price to reflect the loss in development value, as part of the premium to enfranchise.

What practical advice arises?

A key question is: 'how does this affect the premium payable when enfranchising?'

Landlords will be looking to maximise the premium payable by leaseholders where they are compelled to sell their freehold interest as a result of enfranchisement, not least because they will be losing the right to collect future ground rents and the benefit of premiums payable from future lease extensions.

This case highlights the importance of factoring in development value, where possible, when assessing the premium payable on collective enfranchisement, as this could well amount to a significant sum.

Reference	
1	[2022] UKUT 42 (LC)

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Karl Anders is head of Walker Morris' Housing Management & Litigation Team advising social and private sector landlords on all areas of residential landlord and tenant law. He is particularly recognized for his expertise in respect of occupational tenancy possession actions relating to all types of tenure, possession claims against trespassers, lease forfeiture and anti-social behaviour injunctions.

Amongst Karl's clients are lending institutions, fixed charge receivers, registered providers of social housing, nationally recognized letting agencies and the largest UK supplier of student and key worker accommodation.

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Pawan has experience of long residential leases and litigation in connection with this area of law. For example, proceedings in the residential property tribunal in relation to the reasonableness of service charges and administration charges, as well as other applications relating to long residential leases. He also has experience of service charges and property management related issues, service charge recovery, section 20 consultation, licences to alter and licences to assign. Pawan also has experience of lease extensions, both statutory and voluntary.

Pawan acts for landlords, management companies, managing agents and also lessees.