Collective enfranchisement: room for reform?

The government's plans for leasehold reforms include seeking to redress the imbalance of power and increase transparency for leaseholders. Cases such as that summarised below, which serve as a welcome clarification of statute, illustrate inherent complexities in the enfranchisement process and why (particularly from a tenant's point of view) reform is required.

Alford House Freehold Ltd v Grosvenor (Mayfair) Estate and another [2019] EWCA Civ 1848 is a dispute concerning a collective enfranchisement claim relating to a block of flats in Park Lane. The landlord raised an argument over what constitutes a flat for the purposes of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), to prevent enfranchisement. The Court of Appeal held that four flats in the process of construction did not fall within the definition, as they were partially constructed and not yet capable of use for the purposes of a dwelling.

A collective enfranchisement claim must be made by a group of qualifying tenants that collectively hold not less than one half of the total number of flats in the premises (section 13(2)(b) of the Act). The tenants had initially served notice under s13 of the Act, referring to 26 flats in the schedule of qualifying tenants. However, the intermediate landlord had carried out extensive structural works prior to service of the notice, to create two flats on each side of the sixth and seventh floors, rather than one. The main issue between the parties was whether, at the relevant date (the day the notice was served), the block contained 26 or 30 flats. This would determine whether there were sufficient qualifying tenants and the validity of the notice.

The High Court held that each of the four separate areas on the sixth and seventh floors was a "flat" for the purposes of s101(1) of the Act, rendering the notice invalid. The tenants' nominee purchaser ("A") subsequently appealed and the Court of Appeal found for A. Lewison LJ held that separate areas were not "constructed for use for the purposes of a dwelling" on the relevant date, adding clarity to the statutory definition. The initial

notice was only required to refer to the 26 flats and was therefore valid.

Proposals for a single, simplified procedure and prescribed forms for all claims may help reduce issues such as these that come before the court. Changing definition(s) which have been hotly contested (and arguably resolved by case law) may lead to a resurgence in disputes, centered on the new definitions. Will leasehold reforms achieve clarity and simplicity in the enfranchisement process for leaseholders, freeholders and practitioners alike? Perhaps only time will tell ...