SELBORNE CHAMBERS

The Construction of Leases Revisited

1. On 21st April 2023 the Court of Appeal handed down judgment in AHGR Limited v Kane-Laverack (2023) EWCA Civ 428. The case was a second appeal and serves as a very recent example of the principles of construction in operation. The leading judgment was delivered by Dingemans LJ. He began by saying: "*This appeal raises the issue of the proper construction of the phrase "live/work", in a clause in a 999 year lease dated 20 August 2002 of a leasehold flat of Unit 8, Bickels Yard, 151-153 Bermondsey Street, London SE1 3HA ("the premises"). The Bickels Yard development was a mixed development of flats, offices, and one "live/work" unit.".*

2. AHGR was the freehold owner of Bickels Yard. Luke Kane-Laverack purchased the lease of the premises on 23rd October 2009. Post his purchase the premises were used exclusively as a single dwelling house. The premises were a two bedroom, two bathroom premises with the second bedroom functioning as a study.

3. In October 2013 Luke and Peter Kane-Laverack (a doctor and a barrister respectively) applied to the Local Authority for a certificate of lawful use of the premises as a single dwelling house residential flat.

4. Subsequently AHGR brought proceedings in 2019, alleging breach of the live/work covenant, on the basis that it required the premises to be both lived in and worked in. The Trial Judge (HHJ Johns KC) and the initial Appeal Judge (Meade J) both dismissed the claim, deciding that the phrase "live/work" in the lease meant "live and/or work". The Court of Appeal agreed.

5. It was common ground on the appeal that the lease could be construed having

regard to the planning permission which preceded it. This was because the planning permission was a public document, and such documents are an admissible part of the background that can be used to construe a contract (per Cherry Tree Investments v Landmain (2013) CH 305). However there was a dispute between the parties as to the admissibility, as an aid to the construction of the lease, of Supplementary Planning Guidance ("the SPG") that had been issued by the Local Authority prior to the grant of the lease. Dingemans LJ, and the other Court of Appeal Judges, decided that the leaseholder was permitted to "live and/or work" at the premises, so that it could be used for residential purposes only.

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6. As the Learned Judge stated, at paragraph 41, "*That is a conclusion which has been reached without the use of any extrinsic materials, and I do not consider that the reasonable reader of the grant of planning permission would have regard to the SPG, the earlier plan (plan 304D), or the planning officer's deferral reports. This is because those documents were neither referred to nor incorporated into the grant of planning permission*". As it happens the Judge also felt that the deployment of the "*extrinsic materials*" would not have changed his decision. Nonetheless the importance of the case lies in the Appellate emphasis upon the limited material that can be deployed, by way of background, in construing a lease.