Falcon Chambers

In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month: rights to light, and 2 landlord and tenant cases: one on the extent of demise, and an important decision on the requirement for a term certain. Readers should also be aware of this month's important Court of Appeal decision under the Building Safety Act 2022, summarised here, and discussed in a podcast by two of the Falcon chambers counsel involved, available here.

JULY 2025

Cooper v Ludgate House Ltd and Powell v Ludgate House Ltd [2025] EWHC 1724 (Ch)

Summary

The High Court refused to grant an injunction in a claim for interference with rights to light.

The claimants were the leasehold owners of flats in a building in proximity to a substantial new development. They claimed that their rights to light would be actionably interfered with by the construction of various planned buildings, and indeed had already been interfered with, such that parts of an existing building ought to be demolished.

Unusually, since the particular building in issue had been built, there has been a resolution under section 203 of the Housing and Planning Act 2016 permitting the construction of additional buildings which would further impede the light to the claimants' flats and in respect of which the claimants are only entitled to claim compensation referable to diminution in value.

Fancourt J held:

1. Other sources of light that could not be legally protected (i.e. light which would be blocked by buildings covered by the s.203 resolution) should be left out of account when considering the interference.
2. The Waldram method of measuring whether a room remained sufficiently well-lit to determine whether an interference was actionable simplified matters and has stood the test of time. It should continue to be used, though it was also necessary for the surveyor to stand back and consider which areas of the room were affected. In marginal cases, it may be appropriate to have regard to Radiance results too.
3. Although there would be an actionable interference with the claimants' rights to light, it was not appropriate to grant an injunction. Following

Fen Tigers, there was a broad discretion whether to grant an injunction or order damages in lieu, with the Defendant having the burden of persuading the Court not to grant an injunction. The Defendants discharged that burden here because:

a. The grant of an injunction would either be pointless (because the developer would likely obtain a fresh planning permission which would be protected by the s 203 resolution), or would lead to the loss of a valuable modern net zero office building which it was in the public interest to retain because of the environmental impacts of demolition and the economic benefits brought by the building.
b. It would be oppressive to the developer - who had spent over £200 million on the development - to require demolition, in comparison with the harm to the claimants. Other tenants had settled for money.
c. The fact that the developer had pursued a strategy in its right to light negotiations with affected parties which gave them little time to respond before the building was commenced was not a reason to grant an injunction, in the absence of anything unfair or exploitative.
d. The tenants of the building had not been joined.

4. Although *One* Step created a new principled basis for determining whether negotiating damages are available and the judge had to determine which method of quantification gave a fair equivalent for what had been lost, it was appropriate to award negotiating damages, rather than damages for diminution in value.
5. When assessing negotiating damages, the fact that other flat owners had settled for the "book value" sums should be left out of account. The judge started with a figure of 12.5% of the development gain arising from the infringement, and attributed one third of that to the Claimants, split between them in proportion to their loss of light. However, this felt too high compared with the value of the flats, so was reduced by about a further third. This resulted in damages of £500,000 and £350,000 (as compared with the diminution in value of £60,000 and £20,000) respectively.

Why it's important

Fancourt J's lengthy and detailed judgment is a landmark decision in rights to light, and contains detailed analysis of numerous points likely to be significant for future claims; it is required reading for all practitioners dealing with this area. It contains a detailed analysis of how the Waldram method should be applied.

But it is likely to have wider application, given the detailed treatment of the correct approach to remedy in cases where there has been a nuisance. The case contains, in particular, a detailed analysis of the Supreme Court decision in *One Step*.

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HLS Leisure Ltd v Darville and Son Ltd [2025] EWHC 1884 (Ch)

Summary

The High Court dismissed an appeal against a finding that a ventilation duct was part of premises demised to a tenant and therefore the landlord was not liable for a nuisance caused by it.

The case concerned a nuisance arising from a ventilation duct forming part of the extraction system for a takeaway restaurant. The duct was noisy and leaking grease into a loading bay, where the entrance to the appellant's premises was situated. The appellant claimed against the respondent, the landlord of the takeaway restaurant, on the basis that the duct was the landlord's and therefore the landlord was liable.

The High Court upheld the first instance judge's finding that the duct formed part of the demised premises, despite falling outside the area occupied by the tenant and shown on the lease plan. It was a fixture attached in part to that area, which exclusively served that area and which was necessary for the use of the demise by the tenant, so the parties would have intended that the tenant be responsible for its maintenance. Although the drafting of the lease contained some infelicities, the judge had correctly interpreted its provisions.

Why it's important

This case turned on the specific drafting of the lease in question, but the issue of whether areas beyond the red line on a plan can form part of a demise is one which crops up reasonably regularly. The analysis of the relevant ducting as forming part of a single system which was attached in part to the area within the lease plan shows the Court's flexibility in interpreting the extent of the demise to arrive at a result which makes commercial sense.

AP Wireless II (UK) Ltd v On Tower (UK) Ltd [2025] EWCA Civ 971

Summary

The Court of Appeal held that an agreement took effect as a licence.

The agreement in question was for a minimum term of 10 years, thereafter terminable *'by either party giving to the other not less than 12 months' notice'*. An issue in the litigation concerned whether such an agreement could constitute a

lease, or whether it must, as a matter of law, take effect as a licence because there was no term certain.

The Court of Appeal concluded that:

1. The term was uncertain because it could not be said with certainty at the start of the term when it might end. It was not, on its true construction, either a yearly tenancy with a minimum duration of 10 years, or 10 year term followed by a periodic tenancy.
2. There is no general rule that a term will be uncertain only if it has either an initial term of uncertain duration or a fetter of uncertain duration on the ability to give notice, and that absent such invalidating features, no issue in relation to certainty of term can arise.
3. The court should look for the 'best fit' for what the parties intended, which in this case was a licence, not a periodic tenancy.

Why it's important

The particular context of this case was the Electronic Communications Code, under which the court's conclusion as to whether the agreement was a lease or licence would determine the applicable renewal regime. While the decision will impact numerous similar cases in that context, it also has wider ramifications, particularly in view of the court's conclusion that the obiter comments in *Berrisford v Mexfield Housing Co-operative Ltd* [2011] UKSC 52 as to the effect of a void lease should be followed. Going forward, where an agreement does not grant a term certain, there will be room for argument as to how the parties would have intended it to take effect.

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