

Failure to Reserve Rights Means Landlord's Plans Stymied

A landlord, which wished to add an extra floor to maisonettes it owned, recently came unstuck because the drafting of the leases for the maisonettes was insufficiently precise.

The landlord's attempt to develop the property was opposed by the top-floor tenant. Firstly, he argued that the roof space above his flat (to which he had no access) was part of the premises demised to him under the lease. Secondly, he argued that the development would result in him suffering a loss of light, because his flat had three skylights.

The court agreed that the tenant's lease did include the roof space and roof, despite the fact that there was a landlord's obligation to repair the roof within the terms of the lease. The lease referred to the roof and walls of the premises and, furthermore, the skylights were clearly integral to the design of the tenant's flat.

The tenant's first ground for objection was successful. Although this meant that his argument regarding loss of light did not need to be heard, it is likely that the tenant would have been successful on that ground also.

In this case, the original lease had clearly not been drafted with any thought of a future addition of an extra storey in mind. Had it been, the landlord would have reserved sufficient rights to enable it to undertake the works. The tenant was therefore in a position to prevent the development.

When negotiating leases or contracts it is important to think ahead to make sure that any future rights required are preserved as well as those needed presently. Contact us for assistance in the negotiation of legal agreements and the preparation of all necessary documents.