New Leases – an opportunity for investors

Landlords may be surprised by a significant decision of the House of Lords which will permit the head tenant of a building that contains residential flats potentially to claim a new lease of any individual flat within its demise. Previously the Court of Appeal had held that a head tenant in this situation would not be entitled to a new lease of an individual flat. That decision had generally been regarded as fair, since the original purpose of the enfranchisement regime was to protect those who occupy residential flats on long leases.

Opportunities for investors first arose in 2002 with the removal of the three year residency requirement as a prerequisite to the entitlement to the grant of a new lease. The House of Lords’ decision earlier this month in Cadogan & Others v 26 Cadogan Square Limited, Howard de Walden Estates Limited v Aggio & Others [2008] UKHL 44, confirms that commercial investors who own, for example, the head lease of an entire block of flats or of a mixed use property, can take advantage of the legislation and acquire new leases of individual flats within their overall demise.

THE FACTS

The Leasehold Reform, Housing and Urban Development Act 1993 gives a “qualifying tenant of a flat” the right to acquire a new long lease of that flat from its landlord, effectively extending the original lease by 90 years. A qualifying tenant needs to hold a lease which was originally granted for a term of 21 years or more.
In the *Cadogan* case the head tenant had a 65 year lease of the larger share of a five storey building, comprising some offices and one flat at third, fourth and fifth storey levels which was let on an assured shorthold tenancy. The head tenant served notice on its landlord, the freeholder, seeking a new lease of the flat. The landlord served a counternotice saying that there was no entitlement to a new lease.

In the *Howard de Walden* case a building was let under a 62 year lease. The building contained five flats. Three flats were themselves sublet on long leases, whilst two of the flats were vacant. The head tenant claimed new leases of the two vacant flats and the landlord resisted, arguing that the head tenant was not a qualifying tenant under the 1993 Act.

**THE ISSUE**

The House of Lords had to decide whether a tenant of a lease which included more than flats, so additional property such as offices or common parts, could be a “qualifying tenant” of any flat that was included in its demise. The head tenants argued that they could be, subject only to the possibility of there being an undertenant with a long lease who was therefore the “qualifying tenant”.

**THE DECISION**

The House of Lords analysed the language of the legislation and concluded this gave no basis for finding that a tenant of a lease which comprised more than one single flat should be considered to be outside the statutory regime. The right to acquire a new lease is given to a tenant “of a flat”. This, said the House of Lords, did not mean a tenant of a flat and no other property. Rather it had a wide meaning of a tenant of a property which included, but was not necessarily confined to, a flat.

Secondly, their Lordships debated if there were policy considerations why there should be no right to acquire a new lease. In a lease extension of a single flat, the demise of the new lease will be identical to the demise of the existing lease. On the grant of a new lease of part important issues concerning the form of the lease need to be addressed: what are the boundaries of the flat to be, how are the rent and covenants to be apportioned, what rights over common parts should be granted and reserved, how is responsibility for the repair of the structure of the building to be shared?

The landlords argued that the legislation did not provide any machinery for answering these questions. The House of Lords did not deny that practical difficulties could arise, but had confidence that the Leasehold Valuation Tribunal, to whom disputes will be referred, had the experience and expertise to deal with these. Their Lordships concluded there were no compelling reasons of policy for refusing the head tenants’ claim.

**COMMENT**

Investment opportunities first arose under this legislation with the removal of the residency requirement. A lease is a wasting asset and the House of Lords’ view was that a commercial tenant’s need to enhance the value of its investment is as great as that of a residential occupier. Granting a head tenant a new lease of part will inevitably raise practical issues and it will be interesting to follow how (and if) the Leasehold Valuation Tribunal resolves these.
Planning for a better London

The new Mayor of London, Boris Johnson, has published “Planning for a Better London”, a consultation document setting out how he proposes to deploy the Mayor’s unique planning powers. A complete review of the London Plan will commence within 18 months. Significant proposals include:

- Use of the planning system to obtain contributions to Crossrail;
- Opposition to plans for a third runway at Heathrow;
- 50% affordable housing target for new development to be dropped;
- Support for tall buildings in appropriate locations;
- Establishment of an Outer London Commission in conjunction with work to support outer London’s town centres and the West End;
- Developers of major retail schemes to be required to provide smaller affordable units; and
- Use of the planning system to address the challenges of climate change whilst maintaining respect for existing character. This will include support for on-site renewable and micro-generation of energy.

MAYER BROWN ADVISES CLS HOLDINGS PLC ON THE DISPOSAL OF ONE LEICESTER SQUARE AND COVENTRY HOUSE, HAYMARKET TO CRITERION CAPITAL

Leading international law firm Mayer Brown has advised CLS Holdings plc on the group’s disposal of its landmark properties at One Leicester Square and Coventry House, Haymarket to Criterion Capital.

Criterion Capital, the UK asset management company of the Aziz Family Trust, bought the properties for a combined £57.2 million. CLS Holdings plc is a property investment company which has been listed on the London Stock Exchange since 1994. The company has a property portfolio in London, France, Sweden and Germany valued at £1,175.3m (December 2007).

One Leicester Square, part of which is occupied by the nightclub Sound, is a nine storey leisure and retail building occupying a prominent position on the north side of the square. It comprises 37,920 sq ft (3,523 sq m) and is let to Nickelodeon Huggins, Planright Limited, Sound Too Limited, Crest Trading and Empire Cinema. Coventry House, Haymarket, overlooks Piccadilly Circus and provides 18 apartments (14 of which have been sold on long leases) above a restaurant.

Gary Watson, senior real estate partner at Mayer Brown who led the team working on the deal said: “This transaction demonstrates that there is still a strong demand for outstanding properties.”