

BSA and Enfranchisement: Points to consider

Mark Loveday

tanfieldchambers.co.uk



1

Table of contents

01 Introduction

A note of caution. There is very little recent caselaw

04 Development value

BSA 2024 will remove/reduce DHV for some rooftop schemes

02 Should lessees claim freehold?

Some claims should just not be brought

03 Is there a market?

Some reversions will have –ve or no value

2

2

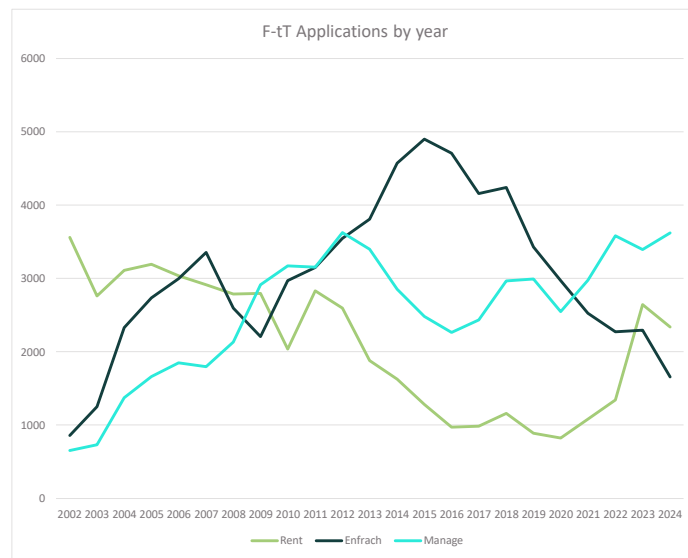
5th March 2025

Introduction: a note of caution



3

- No real caselaw on how BSA 2022 affects leasehold enfranchisement
- Number of FTT enfranchisement decisions has fallen since 2022
- No enfranchisement UTLC decisions for 12mo



4

4

2: Should lessees claim the freehold?

Advice to tenants- and landlords?



5

Current landlords have substantial obligations under BSA 2022

- If landlord meets "developer test", it must remedy historic and current building safety defects
- Even if does not meet developer test, it must still:
 - pay for remediating cladding
 - pay for remediating non-cladding safety defects (unless they meet the contribution condition)
 - complete landlord's certificates correctly
 - comply with remediation orders/remediation contribution orders
 - be responsible for enhanced building safety (responsible persons, etc.)

6

6

Can works be paid for from service charges?

- **Leaseholder protections in Sch.8 BSA 2022:**
 - Cladding costs - never recoverable
 - Wide range of other Sch.8 limitations: e.g., *Adriatic Land 5 Ltd v Long Leaseholders of Hippersley Point* [2023] UKUT 271 (LC)
 - Vulnerable to landlord certificate errors (at least temporarily)
- **Contractual recoverability/reasonableness of service charges under s.19 LTA 1985: e.g., *Assethold v Adam* [2022] UKUT 282 (LC)**

7

 Tanfield

7

What this means

- IF there are building safety defects, many leaseholders would not be advised to acquire the freehold (at least until safety works have been completed)
- In any event, nominee purchasers need to be clear about potential exposure to building safety service charge costs (e.g., landlord certificates served or missed by freeholder)
- Query whether the BSA 2022 regime has affected the market generally?

8

 Tanfield

8

5th March 2025

3: Effect on the market?

Has the market shifted?



9

Buildings with safety defects

- For many of the above reasons, there may simply be no market at all for some buildings with significant building safety defects
- If overall value is negative, premium is nil: LRHUDA 1993 Sch.6 para 2(2)

10

10

Other Buildings

- *Lawrence Wharf London SE16* (LON/00BE/OCE/2020/0025): post Grenfell “emerging caution for tall blocks” was reason for rejecting comparables
- *Flat 42, 8 Newton St, London WC2* (LON/00AG/OLR/2021/0966): “If indeed the market for flats in high-rise blocks is affected by fire safety concerns, then that is already reflected in the comparables which were cited by the experts. The general lack of sales does not necessarily reflect purchasers seeing the block as blighted due to its construction

11

 Tanfield

11

Other effects on open market value?

- What about the *Sportelli* 0.25% risk premium for managing flats?
- And any other thoughts from valuers?

12

 Tanfield

12

4. Development Hope Value

The BSA 2024's impact on development hope value

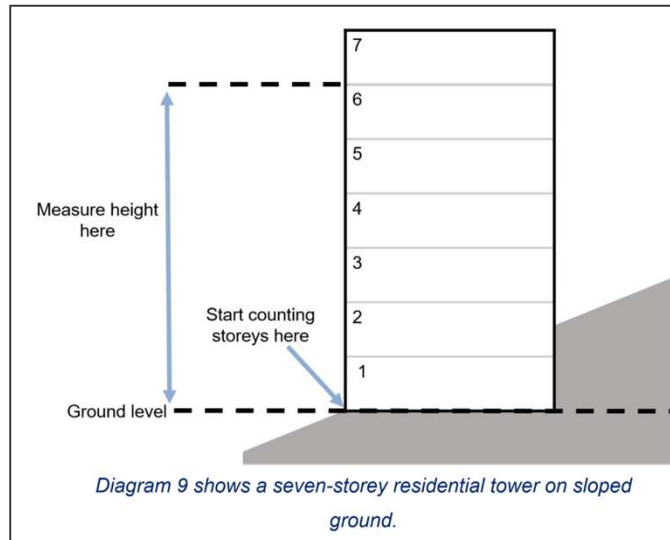
13

Airspace leases / and rooftop developments

- Higher Risk Buildings: BSA 2024 s.65
- Basic definition is 18m or 7 storeys containing at least 2 residential units
- Click to edit Master text styles
 - Second level
 - Third level
 - Fourth level
 - Fifth level

14

- Whether a building is a Higher Risk Building can be complicated
- Higher-Risk Buildings (Description Supplementary Provisions) Regs 2023



15

Tanfield

15

Points to watch out for

- Additional/replacement 'fire evacuation' lifts
- Fire lobbies on landings
- Sprinkler systems + works to structural elements within existing flats
- Leaseholder obligations and access rights under BSA 2022 s.95-97 may not give the landlord a right to carry out building safety works within flats

16

Tanfield

16

What this means

- “Gateway” planning system for Higher Risk Buildings
 - Supervised by Building Safety Regulator
 - Gateway 1: Planning
 - Gateway 2: No construction until regulator approves
 - Gateway 3: No occupation until regulator inspects and issues certificate
- Extra ‘planning’ risk + additional costs/delays will need to be factored into residual valuations

17

Tanfield

17



- Does this tip scheme over the edge in terms of viability?
- *Vale Court* “gambling chip” (£5,000) for DHV?

Tanfield

18



Mark Loveday

Clerks@tanfieldchambers.co.uk

Contact us

Tanfield
2-5 Warwick Court
London WC2R 5DJ
T: +44 (0) 20 7421 5300
E: clerks@tanfieldchambers.co.uk

Follow us

