

## The right balance

### By Natasha Rees

The live/work concept was originally developed to meet the needs of artists and craftsmen who traditionally worked in studios with ancillary residential accommodation. First adopted by planners in Tower Hamlets in the late 1980s, it was soon being used by the planning departments of Islington and Hackney Councils with regard to loft and warehouse conversions. The phenomenon soon gathered pace. Planners saw it as a way to regenerate previously run-down areas. Later, as house prices and office costs increased, commuting became more difficult and information technology took off, the concept began to appeal to a wider range of tenants.

More recently, developers have jumped on the bandwagon, seeing live/work as a means to evading zoning restrictions that would normally prevent residential development in commercial or industrial areas. The growing number of developments that incorporate live/work units used for residential purposes has led to an erosion of employment land.

What was previously thought of as a way of regenerating declining areas is now perceived as a method by which developers can secure part-residential development on designated employment sites. Some London boroughs are therefore changing their policy towards the live/work concept and most planning departments are taking a more restrictive approach. Simon Millican, of The London Planning Practice, says that it is no common policy to refuse live/work use on employment sites unless the premises are outmoded or commercially unviable for business use. Within the past year, Hackney Council have even served enforcement notices on tenants of live/work units in Stoke Newington.

#### What does this mean for tenants?

Tenants of such units need to know what the term “live/work” means since it affects the way in which they can use their premises and indirectly impinges upon their right to enfranchise under the Leasehold Reform, Housing and Urban Development Act 1993. This Act, among other things, allows a tenant of a flat to extend its lease by 90 years, provided that:

- The tenant has been the tenant of a long lease of the flat for the previous two years;
- The premises are a flat: crucially, a flat is defined as a building that is “constructed or adapted for the purposes of a dwelling”; and
- The premises must be occupied for residential purposes; a business lease will not qualify.

The meaning of the term “live/work”, as set out in the user clause of a lease, will largely depend upon the wording of that clause, which, in turn, will usually be based upon the planning permission for the property. Until recently, the term was a woolly concept, and this was reflected in the drafting of user clauses, as was the case in *Bishopsgate Foundation v Curtis* unreported 3 September 2004.

This dispute arose out of the tenant’s desire to enfranchise his tenancy of the third floor of an old industrial/commercial building in Shoreditch. In 1994, a group of artists had approached the landlord with a view to refurbishing the building and using it as studios. Most of the artists dropped out, but a purchasing group of prospective tenants was formed, calling itself Nile Street Studios Ltd. In 1993, this group obtained planning permission from Hackney Council for “use of the ground and basement floors for B1 purposes and the first and second floors as live work units”. As a result, the original user covenant under the head lease, which had been restricted to use as a factory or as office premises, was changed to “use for all or any of the purposes set out

in Class B... on the ground and basement floors and for use as live/work units on the first, second and third floors”.

When the sub-under lease of the third floor was subsequently granted, it contained a slightly more detailed description, stipulating that the premises should not be used other than for “live/work artist design/crafts studios or with the prior written consent of the lessor for any other BI purpose”.

The evidence in the case suggested that the planners had conceived of units within which artists/craftspeople would both live and work, in line with the original development of the live/work concept. It was also claimed that because the ground and basement floors were to be retained for business use, the planners were less concerned about the use of the upper floors. One witness in the case stated that he had been told by Hackney planning department that live/work was “residential by another name”. It was, therefore an informal planning term that, at that time, was not a defined or established planning category. The court accepted this, and decided that live/work should be interpreted broadly as live and/or work.

Although the original group of purchasers were artists and craftspeople who wanted studios with ancillary residential use, later purchasers such as the tenant were buying the premises for use as a home. In view of the court’s finding that “live/work” meant “live and/or work”, the court considered the tenant’s use of the premises and the layout of the property in deciding whether he was entitled to enfranchise under the 1993 Act. The tenant was a technology analyst, and his use of the flat for work was clearly incidental to his use of it as a home. He did not work from home, but he did have a computer in the flat that he used for the occasional work-related email. The property was a typical warehouse conversion with an open-plan layout comprising a kitchen, living area, bedroom and separate bathroom. When originally converted it had to comply with residential building regulations and the tenant was liable for council tax rather than it business rates. The judge considered that it was clear from the photographs and plans of the flat that it was “plainly what anyone (even without the statute in front of them) would call a flat though rather larger and fitting with the alternative informal expression of a loft”. Since the tenant lived there as his home, and any business use was incidental to his residential use, he qualified under the 1993 Act and was entitled to a new lease.

### **Future of the live/work concept**

The court decided that, at the time the lease was granted, the wording “live/work” meant “live and/or work”. Thus, the tenant was not required to work in the premises.

It is unlikely that, as a planning term, it still carries such a meaning. That meaning has changed substantially following the shift in planning policy towards a more restrictive approach. As a modern-day planning term, “live/work unit” refers to property that has been specifically designed for use both as a residential unit and an employment space. Most councils now expect such properties to be used for both residential and business purposes. The planning permission will usually contain a specific condition stating that the property will not be used wholly for residential use together with details of the relative floor space to be occupied for each use. In most cases, the tenant will be liable for both council tax and business rates; it is not a case of working from home. The meaning of “live/work” in planning terms appears to have moved from meaning “live and/or work” to “live and work”. It is obvious from *Bishopsgate Foundation*, however, that the planning permission must be clear. If it does not contain these restrictions and merely refers to use as a live/work unit, tenants might be able to rely upon the decision to argue that the term includes wholly residential use.

## **Conclusion**

*Bishopsgate Foundation* is clearly important for the increasing number of tenants living in loft-style accommodation who are subject to live/work user clauses. Tenants who want to extend their leases can gain comfort from the fact that the court will interpret “live/work” broadly to mean “live and/or work” and will therefore look at the layout of the flat and the tenant’s actual use of the premises when determining a right to enfranchise under the 1993 Act. However, prospective tenants of live/work units should consider their user clause carefully to see whether it reflects the more restrictive approach that is now adopted by planners. If the clause requires sufficient business use they may find that they do not enjoy the same rights as tenants of the old-style live/work units.

## **Checklist for enfranchisement**

- To be a qualifying leaseholder, the tenant must own a long lease of a flat and have owned it for two years prior to the application
- A long lease is a lease for a term of years absolute in excess of 21 years when originally granted or a shorter lease that contains a right of perpetual renewal, or a lease terminable on death or marriage or an unknown date
- A “flat” is defined as a building constructed or adapted for use as the tenant’s home
- If the tenant satisfies these criteria, it will not be a qualifying leaseholder if it is a business tenant. The court will look at the tenant’s actual use of the premises, which must therefore be used primarily for residential purposes; any business use should be minor and incidental to residential use
- If the tenant satisfies these criteria, it will not be a qualifying leaseholder if its landlord is a charitable housing trust and the tenant’s flat has been provided as a part of the charity’s function

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