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Ref LON//LVT/1934/05

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 9. OF THE
LEASEHOLD REFORM ACT 1967**

Applicant Peter Blacker
Respondent The Wimbledon and Putney Common Conservators
Re: The Mill House Wimbledon Common London SW19
Date of Tenant's notice: 14th December 2003
Date of Counter Notice: 13th January 2004
Application date: 13th June 2005
Hearing date: 6th December 2005
Date of Inspection Not inspected
Valuation date: 14th December 2003

Appearances:

For the Nominee Purchaser:

Mr Anthony Radevsky of Counsel
Mr J Hunter of Russell Cooke solicitors

For the Landlord:

Mr Jonathan Brock QC of counsel
Mr E Middlehurst of Gregsons solicitors

Members of the Leasehold Valuation Tribunal:

Mr P L Leighton LLB(Hons)
Mrs S F Redmond MRICS BSc(Econ)

Date of Tribunal's decision: 14th December 2005

1.0 Introduction

- 1.1 This is an application for enfranchisement of the Mill House Wimbledon Common London SW19 ("the property") under the provisions of the Leasehold Reform Act 1967. The property is a house and land within the meaning of the 1967 Act and is situated close to a windmill in Wimbledon Common.
- 1.2 A notice was served by the Applicant Mr Peter Blacker on 14th December 2003 for the acquisition of the freehold interest in the property and a counter notice was served on 13th January 2004 disputing the Applicant's right to enfranchise. As a result application was made to the Kingston County Court and on 4th November 2004 Her Honour Judge Williams declared that the Applicant had the right to acquire the freehold interest.
- 1.3 Following that decision an application was made to the Tribunal on 13th June 2005 to determine the price payable for the freehold interest under Section 9 of the Leasehold Reform Act 1967 ("the 1967 Act"). A number of the issues between the parties were resolved but there remained two issues outstanding, one concerning the terms of acquisition concerning the erection of a close boarded fence and one relating to the application of one of the provisions of Section 9(1A) of the Act namely as to whether the Applicant's interest was to be based on the assumption that he had a right to remain in possession of the property by virtue of the provision of Part 1 of the Landlord and Tenant Act 1954 ("the 1954 Act")
- 1.4 As a result following exchange of Statements of case in November 2005 a hearing was held on December 6th 2005 at which Mr Radevsky of counsel appeared for the Applicant and Mr Brock QC appeared on behalf of the Respondent.

2.0 The Agreed Matters

- 2.1 The parties agreed that the property was to be valued in accordance with the provisions of Section 9(1C) of the Act and that the valuation date was 14th

December 2003. They further agreed that the open market freehold value of the property net of tenant's improvements amounted to £2,750,000. In addition it was agreed that if the tenant's interest was based on the assumption that he had a right to remain in the property at the relevant time by virtue of the provisions of Part 1 of the 1954 Act, that the value of the freehold interest would be reduced by 25% namely a sum of £687,500

- 2.2 The outstanding terms of acquisition were agreed and an agreed form of transfer was placed before the Tribunal.
- 2.3 As a result of the agreed matters the only remaining issue was a matter of legal construction, and the Tribunal decided it was not necessary to inspect the property.

3.0 The Lease

- 3.1 The Applicant holds under the terms of a lease, which was originally granted in 1937 for a term of 34 years from 25th March 1937 at a constant rent of £140. The rateable value of the property at 23rd March 1965 and at the term date was £347 per annum. On 24th October 1970 the then lessee applied for an extension to his lease under the 1967 Act.
- 3.2 As a result a new lease was granted pursuant to the Act in 1973 for a term of 50 years expiring on 25th March 2021. The rent was fixed at £900 per annum for the first 25 years and subsequently in 1996 the rent was adjusted to £36,000 per annum for the remainder of the term.

4.0 The Relevant Law

- 4.1 The relevant law which the Tribunal had to consider was: the 1967 Act in particular Section 9 and Section 16; the 1954 Act; the Local Government and Housing Act 1989, in particular Section 186 and Schedule 10.

4.2 Section 9 of the 1967 Act provides

(1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family not buying or seeking to buy) might be expected to realise on the following assumptions: -

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;

(b) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

(c) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.

The reference in this subsection to members of the tenant's family shall be construed in accordance with section 7(7) of this Act.

(1A) Notwithstanding the foregoing subsection, the price payable for a house and premises,--

(i) the rateable value of which was above £1,000 in Greater London and £500 elsewhere on 31st March 1990, or,

(ii) which had no rateable value on that date and R exceeded £16,333 under the formula in section 1(1)(a) above (and section 1(7) above shall apply to that amount as it applies to the amount referred to in subsection (1)(a)(ii) of that section)

shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:-

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold or an extended lease.;

(b) on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises;

[(i) if the tenancy is such a tenancy as is mentioned in subsection (2) or subsection (3) of section 186 of the Local Government and Housing Act 1989, or is a tenancy which is a long tenancy at a low rent for the purposes of Part I of the Landlord and Tenant Act 1954 in respect of which the landlord is not able to serve a notice under section 4 of that Act specifying a date of termination earlier than 15th January 1999, under the provisions of Schedule 10 to the Local Government and Housing Act 1989; and

(ii) in any other case,]under the provisions of Part I of the Landlord and Tenant Act 1954; (The section in square brackets was introduced by Schedule 11 paragraph 9 of the Local Government and Housing Act 1989)

(c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecoration under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954;

(d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;

(e) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

(f) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.

(1AA) Where, in a case in which the price payable for a house and premises is to be determined in accordance with subsection (1A) above, the tenancy has been extended under this Part of this Act—

(a) if the relevant time is on or before the original term date, the assumptions set out in that subsection apply as if the tenancy is to terminate on the original term date; and

(b) if the relevant time is after the original term date, the assumptions set out in paragraphs (a), (c) and (e) of that subsection apply as if the tenancy had terminated on the original term date and the assumption set out in paragraph (b) of that subsection applies as if the words "at the end of the tenancy" were omitted. (This section was introduced by the Commonhold and Leasehold Reform Act 2002 Section 143(4))

(1B) ...

(1C) Notwithstanding subsection (1) above, the price payable for a house and premises where the right to acquire the freehold arises by virtue of any one or more of the provisions of sections 1A, 1AA and 1B above, or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy, shall be determined in accordance with subsection (1A) above; but in any such case—

(b) section 9A below has effect for determining whether any additional amount is payable by way of compensation under that section; and in a case where the provision (or one of the provisions) by virtue of which the right to acquire the freehold arises is section 1A(1) above, subsection (1A) above shall apply with the omission of the assumption set out in paragraph (b) of that subsection.

4.3 Section 16 of the 1967 Act provides

(1) Subject to subsections (2) and (3) below, where a tenancy of a house and premises has been extended under section 14 above, then as regards any property comprised in the extended tenancy—

(a) (repealed by the Commonhold and Leasehold Reform Act 2002 Section 143)

(b) there shall be no further right to an extension of the tenancy under this Part of this Act; and

(c) neither section 1 of the Landlord and Tenant Act 1954 nor Part II of that Act shall apply to the tenancy; and

(d) after the extended term date neither section 1 of the Landlord and Tenant Act 1954 nor Part II of that Act shall apply to any sub-tenancy directly or indirectly derived out of the tenancy, nor shall a person be entitled by virtue of any such sub-tenancy to retain possession under Part VII of the Rent Act 1977 or any enactment applying or extending that Part of that Act under the Rent (Agriculture) Act 1976.

(1A) The Rent Act 1977 shall not apply to a tenancy extended under section 14 above; but if when this provision comes into force a rent is registered under Part IV of the 1977 Act for a dwelling-house which is the subject of an extended tenancy, the tenant shall not be obliged to pay more than the registered rent under the extended tenancy until the next rental period (within the meaning of the 1977 Act) after the landlord has served on him a notice in writing that the registered rent no longer applies.

(1B) Schedule 10 to the Local Government and Housing Act 1989 applies to every tenancy extended under section 14 above (whether or not it is for the purposes of that Schedule a long tenancy at a low rent as respects which the qualifying condition is fulfilled). (inserted by Schedule 11 Paragraph 10 of the Housing and Local Government Act 1989)

4.4 Section 186 of the Local Government and Housing Act 1989 provides

(1) Schedule 10 to this Act shall have effect (in place of Part I of the Landlord and Tenant Act 1954) to confer security of tenure on certain tenants under long tenancies and, in particular, to establish assured periodic tenancies when such long tenancies come to an end.

(2) Schedule 10 to this Act applies, and section 1 of the Landlord and Tenant Act 1954 does not apply, to a tenancy of a dwelling-house—

(a) which is a long tenancy at a low rent, as defined in Schedule 10 to this Act; and

(b) which is entered into on or after the day appointed for the coming into force of this section, otherwise than in pursuance of a contract made before that day.

(3) If a tenancy—

(a) is in existence on 15th January 1999, and

(b) does not fall within subsection (2) above, and

(c) immediately before that date was, or was deemed to be, a long tenancy at a low rent for the purposes of Part I of the Landlord and Tenant Act 1954, then, on and after that date (and so far as concerns any notice specifying a date of termination on or after that date and any steps taken in consequence thereof), section 1 of that Act shall cease to apply to it and Schedule 10 to this Act shall apply to it unless, before that date, the landlord has served a notice under section 4 of that Act specifying a date of termination which is earlier than that date.

(6) Where, by virtue of subsection (3) above, Schedule 10 to this Act applies to a tenancy which is not a long tenancy at a low rent as defined in that Schedule, it shall be deemed to be such a tenancy for the purposes of that Schedule.

4.5 Schedule 10 to the Act then provides

Para 3

(1) A tenancy which, immediately before the term date, is a long residential tenancy shall not come to an end on that date except by being terminated under the provisions of this Schedule, and, if not then so terminated, shall subject to those provisions continue until so terminated and, while continuing by virtue of this paragraph, shall be deemed to be a long residential tenancy (notwithstanding any change in circumstances).

(2) Sub-paragraph (1) above does not apply in the case of a former 1954 Act tenancy the term date of which falls before 15th January 1999 but if, in the case of such a tenancy, --

(a) the tenancy is continuing immediately before that date by virtue of section 3 of the 1954 Act, and

(b) on that date the qualifying condition (as defined in paragraph 1(1) above) is fulfilled,

then, subject to the provisions of this Schedule, the tenancy shall continue until terminated under those provisions and, while continuing by virtue of this paragraph, shall be deemed to be a long residential tenancy (notwithstanding any change in circumstances).

(3) Where by virtue of this paragraph a tenancy continues after the term date, the tenancy shall continue at the same rent and in other respects on the same terms as before the term date.

Termination of tenancy by the landlord

Para 4

(1) Subject to sub-paragraph (2) below and the provisions of this Schedule as to the annulment of notices in certain cases, the landlord may terminate a long residential tenancy by a notice in the prescribed form served on the tenant—

(a) specifying the date at which the tenancy is to come to an end, being either the term date or a later date; and

(b) so served not more than twelve nor less than six months before the date so specified.

(2) In any case where—

(a) a landlord's notice has been served, and

(b) an application has been made to the court or a rent assessment committee under the following provisions of this Schedule other than paragraph 6, and

(c) apart from this paragraph, the effect of the notice would be to terminate the tenancy before the expiry of the period of three months beginning with the date on which the application is finally disposed of,

the effect of the notice shall be to terminate the tenancy at the expiry of the said period of three months and not at any other time.

(3) The reference in sub-paragraph (2)(c) above to the date on which the application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and

any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of withdrawal or abandonment.

(4) In this Schedule "the date of termination", in relation to a tenancy in respect of which a landlord's notice is served, means, --

(a) where the tenancy is continued as mentioned in sub-paragraph (2) above, the last day of the period of three months referred to in that sub-paragraph; and

(b) in any other case, the specified date of termination.

(5) A landlord's notice shall not have effect unless—

(a) it proposes an assured monthly periodic tenancy of the dwelling-house and a rent for that tenancy (such that it would not be a tenancy at a low rent) and, subject to sub-paragraph (6) below, states that the other terms of the tenancy shall be the same as those of the long residential tenancy immediately before it is terminated (in this Schedule referred to as "the implied terms"); or

(b) it gives notice that, if the tenant is not willing to give up possession at the date of termination of the property let under the tenancy, the landlord proposes to apply to the court, on one or more of the ground

5.0 The Issue

5.1 Both parties agreed that there were three possible conclusions which might arise under Section 9(1A) of the 1967 Act :-

- (a) the tenant would hold over under the terms of Section 9(1A)(b)(ii) as a statutory tenant
- (b) the tenant would hold over under Schedule 10 of the 1989 Act as an assured tenant
- (c) the tenant would hold over under Schedule 10 of the 1989 Act but not as an assured tenant because the rent payable under the lease is currently £36,000 per annum and thus outside the provisions of the Housing Act 1988. His right to remain in the property would therefore be limited to the period of notice prescribed under the Act plus any period which a judge might grant on making a possession order pending the execution of the warrant for possession limited to about 6 weeks.

Mr Radevsky conceded that if (b) and (c) applied the Applicant was entitled to no discount from the agreed open market value of the property and Mr Brock agreed that if (a) applied the Applicant would be entitled to the discount of £687,500.

- 5.2 Mr Radevsky submitted that the valuation was governed by Section 9(1A) of the 1967 Act and that in applying the assumptions the Tribunal did not have to consider the actual legal position which applied or would apply between the parties, as the Act created a number of fictions which operated as assumptions for the purpose of arriving at a valuation. For example there was an assumption that the tenant had no rights under the Act (Section 9(1A)(a) and that the tenant had no repairing liability (Section 9(1A)(c).
- 5.3 Section 9(1A) (b) contained a similar fiction and the duty of the Tribunal was to construe the provisions of sub clauses (i) and (ii) of the Section to arrive at the basis of valuation. He submitted that unless the landlord showed that Section 9(1A) (b)(i) applied then the case fell within Section 9(1A) (b)(ii) as the default provision and the tenant would be deemed to hold over under the provisions of Part 1 of the 1954 Act even though it was no longer possible to create a new tenancy on the termination of a long lease under this Act since 15th January 1999.
- 5.4 Mr Radvesky's argument was that Parliament intended to enact a provision that there should be an assumption that the tenant held over on a tenancy protected by Part 1 of the 1954 Act. This argument was based on the fact that the court had to consider the tenancy at the date of the termination of the original lease by virtue of the assumption in Section 9(1A)(a) which required the Tribunal to ignore the fact of the extension of the lease when valuing the freehold. This, he said, greatly increased the value of the landlord's freehold since it did not require the court to defer the valuation to 2021 when the extended lease would expire.
- 5.5 He argued therefore that it was both logical and fair to assume that Parliament would also have intended the Tribunal to make the assumption that as at that date the lessee would have held over on a lease protected by Part 1 of the 1954 Act. He argued that any other conclusion would have given the landlord a double benefit since it would be making an assumption that the lessee would be holding over on the extended lease for the purpose s of 9(1A)(b) but the assumption that the lease would be valued as at the expiry of the original lease for the purpose of Section 9(1A) (a).
- 5.6 He then submits that since the application is governed by Section 9(1C) and the entitlement does not arise by virtue of Section 1(1A) of the Act the

assumption in Section 9(1A)(b) (i) or (ii) must apply and on their plain meanings Sections 186(2) and (3) do not apply and that it is not a long tenancy at a low rent because the rent is over the £25,000 limit prescribed by the Housing Act 1988.

- 5.7 Mr Brock submitted that having regard to the history of the legislation, the provisions of Section 9(1A)(b)(i) and (ii) which were introduced under the 1989 Act were intended to be and were in fact transitional provision which operated during the period 15th January 1989 to 15th January 1999 when the provisions of Schedule 10 of the 1989 Act came into force in relation to long leases.
- 5.8 Accordingly he submitted that the Tribunal only had to consider that the assumption was that the tenant "has" the right to remain in possession and that the two condition in (b) (i) and (ii) could then be ignored. The assumption would then be that the lessee would hold over on the basis of such rights as he then had namely either an assured tenancy under the Housing Act 1988 or an unprotected periodic tenancy. This is further supported by the removal of the words "at the end of the lease" under Section 9(1A). It is also supported by Section 9(1AA) where it is provided that the relevant time for the purposes of the assumptions (a) (c) and (e) is to be the original term date. It is not intended to apply to assumption (b) and the removal of the words "at the end of the tenancy" and the use of the present tense make it clear that Parliament must have intended a different date for the application of assumption (b) for that in assumptions (a) (c) and (e) which were the term date.
- 5.9 Alternatively he submitted that if (b) (i) and (ii) had to be considered that the tenancy fell within Section 186(3) of the 1989 Act and therefore Schedule 10 applied and not the 1954 Act He submitted that the tenancy was deemed to be an assured periodic tenancy.
- 5.10 He argued that it followed from the wording of the Act that the use of the word "has" and the deletion by amendment of the words "at the end of the tenancy" in Section 9(1A)(b) by the 2002 Act meant that the relevant date for the purposes of Section 9(1) at which assumption (b) would apply was the valuation date (14th December 2003) and not the date of the original term (25th March 1971).

- 5.11 In the further alternative he submitted by way of addition to the arguments advanced in his skeleton argument that if he was wrong and the date to be applied was the term date in 1971 (not 1973 when the lease extension was granted), that one had to adopt the rent payable at that time, namely £140 per annum which was in fact less than two thirds of the rateable value at that time and therefore was a long tenancy at a low rent within Part 1 of the 1954 Act in respect of which the landlord could not serve a notice under Section 4 of the 1954 Act specifying a date of termination earlier than 15th January 1999.
- 5.12 Both parties agreed that the case turned simply on the construction of the section and that in practical terms it was “merits neutral”. Either side would obtain a benefit depending on whichever way the section was construed.
- 5.13 Mr Brock submitted, however, that since it was an expropriatory statute it should in the event of any ambiguity be construed in favour of the landlord whose rights were being taken away under the Act. Mr Radevsky, however, relying upon Paragraph 1-59 of Hague Leasehold Enfranchisement (4th edition) and dicta of Millett LJ in **Cadogan -v- MgGirk (1996) 2 EGLR 75** submitted that the Act was passed to benefit tenants and that in the event of ambiguity should be construed fairly to reflect their rights under the Act

6.0 The Tribunal's Decision

A The Legislative Policy

- 6.1 The Tribunal accepts the proposition that the legislation must be construed to achieve as far as possible the intention of Parliament and that it must be construed fairly on the assumption that it affords rights to tenants subject to safeguarding the interests of the landlord. It would appear that the primary intention of the legislation is to enable the tenant to acquire property interests for which he must pay a fair price.
- 6.2 The legislation is complex in the manner in which it is framed but the pattern adopted by Parliament is similar to that adopted in other property legislation by inserting new sub paragraphs and amendments into sections of existing Acts of Parliament. Although this often results in complex terminology it is presumably intended to be helpful in showing the point in time at which the amendment is made which gives a guide to the purpose of its insertion.
- 6.3 The Tribunal therefore accepts Mr Brock's submission that each of the amendments must be considered in its legislative context in order to ascertain their meaning and purpose.
- 6.4 The amendments to Section 9(1A)(b) of the 1967 Act were introduced by the 1989 Act which extended to leases the policy which the Housing Act 1988 had introduced for short tenancies, namely the introduction of assured tenancies in place of regulated tenancies. The Act preserved existing regulated tenancies under the Rent Act 1977 by means of transitional provisions but did not permit the creation of any new regulated tenancies.
- 6.5 Inevitably, therefore if Parliament abolished the creation of new regulated tenancies and the statutory tenancy, which arose on the termination of the contractual tenancy, similar measures were needed to prevent the creation of a statutory tenancy under Part 1 of the 1954 Act following the termination of a long lease otherwise the policy of the 1988 Act would be undermined in the case of long leases. Those measures were contained in the 1989 Act Section 186 and Schedules 10 and 11. However, whereas Parliament introduced the new regime for short tenancies almost immediately on 15th January 1989, the 1989 Act deferred the introduction of the new regime for long leaseholders until 15th January 1999. At the same time it was necessary to enact transitional provisions to cover those tenancies which would come to an end within the 10 year period which would continue to be statutory tenancies

under the 1954 Act provided they would otherwise have been within the rateable values of the Rent Act and long leases at a low rent

- 6.6 Those leases which fell outside the rent provisions or terminated after 15th January 1999 would not enjoy the protection of the 1954 Act but would enjoy the protection afforded by Schedule 10 of the 1989 Act which would either confer an assured tenancy on termination or a limited period of notice prescribed by that Act.
- 6.7 The effect of conferring an assured tenancy instead of a regulated or statutory tenancy secured a considerable benefit to the landlord, namely the ability to let the property at a market rent instead of a regulated rent. Consequently the effect of the Housing Act 1988 in relation to short tenancies and the 1989 Act in relation to long leases increased the value of the landlord's investment
- 6.8 Since Parliament intended to increase the value of the landlord's investment in residential property by the introduction of the 1988 and 1989 Acts there would be no logical reason for extending Rent Act or 1954 Act benefits to long leaseholders on the termination of their leases after January 1999. Indeed Parliament excluded the protection of the 1954 Act from extended leases by virtue of Section 16(1)(c)(and d) and Section 16(1B) of the 1967 Act.
- 6.9 Accordingly the value of a leaseholder's lease which was due to expire after 1999 would be less valuable than one which could be converted into a statutory tenancy under which the landlord would be unable to charge a rent in excess of the maximum permitted under the 1977 Act.
- 6.10 This fact therefore also had to be reflected in the valuation of leases under the 1967 Act and the Leasehold Reform (Housing and Urban Development) Act 1993. As a result the assumption in Section 9(1A) (b) of the 1967 Act was amended to reflect that fact on the passing of the 1989 Act.
- 6.11 It would therefore be entirely illogical for Parliament to have intended that the 1954 Act regime should be the default provision under the amended provision of section 9(1A)(b). In the view of the Tribunal it is most likely that Mr Brock is correct in his submission that the amendment made in 1989, inserting (i) and (ii) was a transitional provision depending upon whether the lease was governed by the new provisions or remained subject to the 1954 Act. Only if it expired before January 1999 could it remain subject to the 1954 Act because after that date the 1954 Act would be "dead and buried". If Parliament had

intended the 1954 Act to cease to have any effect for operational purposes why would it enact that it continued to have effect for valuation purposes even based on a fictional assumption?

- 6.12 It is clear from Sections 16(1)(c) and (d) of the 1967 Act that Parliament did not intend Part 1 of the 1954 Act rights to apply to extended leases even at the time when the Rent Acts were still in force. The later amendments made in Section 16 (1B) inserted in 2002, made it clear that Parliament intended all extended leases even those not at a low rent were to be subject to Schedule 10 of the 1989 Act. It would be inconceivable therefore if it sought to incorporate rights referable to that Act in a statute dealing with the consequences of the prospective repeal of the Rent Acts. Nor could it be reasonably anticipated that Parliament in passing the 2002 Act would seek to restore any rights under those Acts even by way of a fictional assumption after 15th January 1999 when all practical reliance on that Act had disappeared

B The Words of the Act

- 6.13 The Tribunal is reinforced in its view by the words in the square brackets incorporating the amendment made in the 1989 Act. Prior to this amendment the assumption referred only to the provisions of the 1954 Act because that was the only prevailing statutory provision. After 1989 the insertion of the words clearly intended to apply to all those tenancies which would otherwise be covered by the 1989 Act but preserved the position under the 1954 Act for all those tenancies to which it continued to apply up to January 1999.
- 6.14 The Tribunal also accepts the submission of Mr Brock as set out in 5.8 above that the relevant date for the application of assumption (b) is not the term date in 1971 but the valuation date in December 2003 because Parliament specifically excluded the words "at the end of the tenancy" with effect from the commencement of the 2002 Act in July 2002. The effect of that enactment was to base the assumption on the right to remain, which the tenant had at the valuation date.
- 6.15 The original Section 9(1A) (b) would have read "on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises under the provisions of Part 1 of the Landlord and Tenant Act 1954. That would indeed have reflected the true position at the time when the 1967 Act was enacted so that no fiction was introduced into the assumption.

There is no basis in the Tribunal's view for Parliament in 1989 when phasing out the provisions of the 1954 Act nor in 2002 when introducing the amendment in Section 9(1AA), incorporating a fiction so far removed from the reality of the legal position then prevailing

- 6.16 This is supported by the words of Section 9(1AA)(b) which made it clear by the deletion of the words "at the end of the tenancy" in Section 9(1A)(b) and by specifically enacting that the assumptions in Section 9(1A) (a)(c) and (e) should be based on the original term date, that the relevant date for the application of assumption (b) was not to be the original term date. The retention of the word "has" strongly suggests reference to the valuation date.
- 6.17 The Tribunal therefore concludes that assumption (b) is based on the tenant's rights at the valuation date and that the provisions of (b)(i) and (ii) were intended to be transitional provisions and therefore do not have effect after 15th January 1999.
- 6.18 If the Tribunal were wrong in that construction of the statute it would nonetheless accept Mr Brock's submission that the extended lease was one which fell within Section 186(3) of the Act on the grounds that it would be deemed to be a long tenancy at a low rent, or that it fell within the final limb of Section 9(1A) (b)(i) on the basis that the rent at the term date in 1971 was less than two thirds of the then rateable value.
- 6.19 The Tribunal also notes that Hague on Leasehold Enfranchisement at paragraph 9-52 is of the same opinion that the tenant is entitled to remain in possession on the basis of the amended assumption It continues:-
"The amended assumption is therefore that at the relevant time (i.e the valuation date) the tenant has the right to remain in possession under the statutory provisions in either sub paragraph (i) or (ii) which in practical terms means an assured tenancy pursuant to Schedule 10 of the Local Government and Housing Act 1989"
- 6.20 Whilst, as Mr Brock points out, the tenant's interest may not necessarily be an assured tenancy but may be something less, and it may not be necessary to apply (b)(i) and (ii), the Tribunal accepts that the underlying premise of the argument in Hague is correct and makes no reference to the 1954 Act as applying.

6.21 Mr Radevsky, one of the co-authors of Hague, seeks to argue that paragraph 9-52 is incorrect and has not been subjected to detailed analysis as in this case. It is not without significance, however, as Mr Brock pointed out in argument that at no time since 1999 has there been any suggestion in the main text or the supplements that a contrary argument exists irrespective of its correctness.

Conclusion

6.22 For all these reasons the Tribunal is satisfied that the interpretation contended for by Mr Brock is correct and that there is no room for the application of Part 1 of the 1954 Act in the assumption to be applied under Section 9(1A)(b). Since it has been conceded that no discount falls to be applied in the event that Schedule 10 of the 1989 Act applies presumably on the ground that the landlord in either case is entitled to recover the full market rent, the Tribunal concludes that the amount payable is the agreed sum of £2,750,000

Peter Leighton

14th December 2005

