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LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LEASEHOLD REFORM ACT 1967 HOUSING ACT 1980

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATION UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Ref: LON/LVT/1484/02

Re: 1A Devonshire Place, London W1G 6JZ

Applicant:	Howard de Walden Estates Ltd
Respondents:	Dr Mahmood Suleiman Maghribi Mrs Rehab Maghribi
Date of Tenants' Notice:	22nd June 2001

Appearances:

Miss K Holland of Counsel
Instructed by Messrs. Speechly Bircham, Solicitors
Mr WHH Van Sickle, B.A., MSc (Pl)

For the Applicant

Mr Edwin Johnson of Counsel
Instructed by Messrs. Berger Oliver, Solicitors
Mr Victor Belcher, M.A.

For the Respondents

Members of the Leasehold Valuation Tribunal:
Miss A Seifert FCIArb
Mr D Levene OBE MRICS
Mr D Wills ACIB

Date of Decision:

Ref: LON/LVT/1484/02

1A Devonshire Place, London W1G 6JZ

THE TRIBUNAL'S DECISION

PRELIMINARY

1. The Howard de Walden Estates Limited, the freeholder of 1A Devonshire Place, London W1G 6JZ ("1A Devonshire Place"), applied to the Leasehold Valuation Tribunal on 8th March 2002, for a determination of the price payable for the acquisition of the freehold interest under Section 9 of the Leasehold Reform Act 1967 as amended ("the Act"). The Applicant also applied for the determination under section 21(2) of the Act as to what provisions ought to be contained in the conveyance of the property. The Tenants' Notice of Claim was dated 22nd June 2001. The Notice in Reply admitting the claim was dated 15th February 2002. At the hearing the Tribunal were informed that the provisions to be contained in the conveyance of the property had been agreed, and that therefore no determination was sought in that respect.

2. The property is presently held on a lease dated 21st May 1924 for a term of 80 years expiring at 6th April 2003. The lease dated 21st May 1924 is between The Right Honourable Thomas Evelyn Baron Howard de Walden and Seaford (1) and Percy John Vardon (2) ("the 1924 lease"). The rent payable was £20 for the first year of the term and thereafter during the residue of the term, the annual rent of £55 payable by quarterly payments on 6th January, 6th April, 6th July, 11th October.

REPRESENTATION

3. At the hearing the Applicant freeholder/landlord, the Howard de Walden Estates Limited, was represented by Miss Katherine Holland of Counsel, instructed by Messrs. Speechly Bircham, Solicitors. The Respondent tenants, Dr Mahmood Suleiman Maghribi and Mrs Rehab Maghribi, were represented by Mr Edwin Johnson of Counsel, instructed by Messrs. Berger Oliver, Solicitors.

4. Mr WHH Van Sickle, B.A., MSc (Pl), a building and topographical historian, produced a report dated 9th October 2002 which he amplified in oral evidence on behalf of the Applicant. Mr Victor Belcher MA, an architectural and building historian, produced a report dated 13th September 2002, which he amplified in oral evidence on behalf of the Respondents. The Applicant was represented by Mr Ian Macpherson MA FRICS of Messrs. Gerald Eve and Mr Kevin Ryan FRICS of Carter Jonas London Residential Ltd. and the Respondents were represented by Mr Gavin Buchanan MRICS of Messrs. Colliers CRE. At the hearing no valuation evidence was called as the parties had agreed all valuation matters, variable on certain outcomes on legal and factual issues.

ISSUES

Matters agreed

5. The valuation date was 22nd June 2001 at which date the current lease had about 1.78 years unexpired.

6. It was agreed that the relevant basis of valuation to be applied as the means of calculating the enfranchisement price payable for the property is that in Section 9(1C) of the Act. That statutory basis of valuation incorporates, in Section 9 (1A) (d):
"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."
The parties' valuers had agreed the enfranchisement on three different bases. These bases are as follows:

A. (Stage 1 works) £1,636,100 if only the works undertaken since the grant of the 1924 lease of 1A Devonshire Place on 21st May 1924 are to be disregarded.
B. (Stage 2 works) £1,188,500 if the correct effect of Section 9 (1A) (d) in this case is to exclude from the enfranchisement price any value over and above that which would be attributable to the building which was on the site of the property before its redevelopment ("the mews building")
C. (Stage 3 works) £975,400 if the effect of Section 9 (1A) (d) in this case is to exclude from the enfranchisement price any value over and above that which would be attributable to the original building formerly on the site of the property before its improvement to form the mews building ("the original mews building").

Valuations were provided for each of the alternative basis A, B, and C respectively.

Matters in dispute

7. Both parties accept that the Stage 1 works are to be disregarded.

8. The Applicant contends that the Tribunal should only take account of the Stage 1 works, and the enfranchisement price should therefore be £1,636,100.

The Respondents contend that works Stages 1, 2 and 3 works should be disregarded in which case the enfranchisement price should be £975,400.

9. The question for the Tribunal is whether the enfranchisement price should be on base A, alternatively B, alternatively C.

INSPECTION

10. The Tribunal inspected 1A Devonshire Place internally and externally and also and the immediate surrounding area. The subject property is a wide low built 1920's house on basement, ground, first and second floors, having the appearance of a detached house with a Georgian style elevation. The current accommodation is set out in the statement of agreed facts. Briefly, it comprises some 7 bedrooms, 4 bathrooms, 3 reception rooms and 2 kitchens.

11. 1A Devonshire Place is situated on the north side of Devonshire Street between its junctions with Devonshire Place and Devonshire Mews West. The subject property has a return frontage to Devonshire Mews West and is adjoined to its rear by a mews house at 2 Devonshire Mews West. It is situated to the rear of the building at 1 Devonshire Place on the corner of Devonshire Place and Devonshire Street. It is within the Harley Street Conservation Area and within close proximity of West End shopping and entertainment to the south and Regent's Park to the north. It is close to London Transport stations and numerous bus routes.

EVIDENCE, SUBMISSIONS AND DECISION

EVIDENCE

12. The main points in the history of the subject property appearing from the available correspondence, documents and expert evidence is as follows:

1] Late 18th century – 1 Devonshire Place was built together with stable building at the rear (the original mews building).

2] Mr Belcher and Mr Van Sickle agreed that the original mews building was a 2 storey building comprising a coach house and stabling on the ground floor and a hay loft and some living accommodation, generally for a coachman and groom, above. There are no plans or elevations of the original mews building.

3] 1851 – Mr Van Sickle stated that the Census showed that a coachman was employed at 1 Devonshire Place and that the original mews building was separately occupied.

4] Late 1860's – Mr Van Sickle stated that the sequence of historical events suggested that the original mews building probably fell into disuse in the 1860's and remained unused until the mid 1890's.

5] 30th April 1883 - Terms quoted to Mary Ann Spencer Bell for extension of lease for 37 years from Lady Day 1887. Amendment to terms included reduction in premium from £1050 to £500 said to be in consideration of large outlay.

6] 1883 - Improvements carried out to 1 Devonshire Place and/or the original mews building. Mr Van Sickle records that there was a change in the rateable value.

7] 12th March 1884 – Agreement for reversionary lease of 1 Devonshire Place and the original mews building between the Applicant's predecessor in title and Mary Ann Spencer Bell for the term of 37 years from Lady Day (6th April) 1887 expiring 6th April 1924 at the rent of £120 and premium of £500.

8] 16th February 1885 - the above lease was granted ("the 1885 lease").

9] 1891 – Mary Ann Spencer Bell died. By her will she left her interest in 1 Devonshire Place and the original mews building to her 3 daughters.

10] 1896 – Improvements carried out to 1 Devonshire Place and/or the original mews building. Mr Van Sickle records a change in rateable value.

11] 1896 – Miss Helen Spencer Bell, daughter of Mary, went into occupation in midsummer.

12] 1901 – Census shows that the original mews building was occupied by Mr William Dudden, coachman to Miss Helen Spencer Bell, his wife, grown son and nephew.
It was agreed between the experts that no later than 1901 the part of the accommodation over the original building had been returned to a habitable state. Mr Belcher stated that part of the first floor was used to store hay (there was a hayloft door) but a substantial part was used as living accommodation.

13] 1903 – Miss Helen Spencer Bell married LH Shore Nightingale.

14] 21st April 1914 – Terms quoted to separate leases of house and mews and grant 999 years for house and 10 years for mews from 5th April 1914.

15] 18th March 1916 – Lease of 1 Devonshire Place – front part for 999 years and rear part for 10 years – granted by the Estate to Mr and Mrs Shore Nightingale ("the 1916 lease") subject to the 1885 lease. The lease contained a covenant by the lessees at their own expense and to the satisfaction of the lessor to carry out the works specified in the Schedule to the lease at the times mentioned in the Schedule.

16] 26th July 1921 – Letter from Waterhouse & Co [Solicitors for Mr and Mrs Shore Nightingale] to BS & G outlining the proposal of Mr and Mrs Shore Nightingale to sell 1 Devonshire Place residue of 999 years subject to the 1885 lease to Dr Parkinson and to sell residue of 10 years under the 1916 lease of the mews building to Mr Tresidder. "With regard to 1 Devonshire Place Stables we understand that Mr Tresidder's purchase of the remainder of the 10 years term is connected with some arrangement to which he has come with Colonel Blount, the agent of your Client's Estate, for the erection of a bijou residence on the site ....".

17] December 1921 – Mr Dudden still in occupation of the mews building but vacated 3rd December 1921. Separate assessments for the house (1 Devonshire Place) and the mews building by March 1922.

18] 5th December 1921 – Mr Tresidder took assignments of the leasehold interests in the original building under the 1885 and 1916 leases. This refers to "ground with stable building and all other erections thereon" and plan attached also refers to the 'stable building'.

19] 14th December 1921 – Terms offered to Mr Tresidder for a new 80 year lease on the basis that the lessee was to erect a new house on the site of the mews building. These terms were not taken up.

20] Mr Belcher stated that although continuing to be described in documents as 'stables', during the period 1885 to 1923, the original mews building had been converted from coach house and stables on the ground floor with living accommodation above, to a building with garaging on the ground floor. In his view the coachman would not have been able to afford to pay for this work and the most likely scenario was that the tenants had paid. As far as amenities were concerned, gas and water would almost certainly have been laid in 1885, but not electricity, which was introduced at a later date. Mr Van Sickle agreed but added that very little work would have been carried out and he would have described it as modernising the accommodation rather than conversion. Plans and elevations of the mews building were made in March 1923 shortly before its demolition [Tab 1 to the Report of Mr Belcher].

21] 13th March 1923 – Contract ("the agreement") between Mr Tresidder and the Estate for the surrender of the 1885 lease, the surrender of the 1916 lease and for the grant of a new long lease for a term commencing on 6th April 1923 at a rent of £20 until 6th April 1924 and thereafter £55 pa. As part of the agreement Mr Tresidder agreed to demolish the mews building and construct 1A Devonshire Place. The agreement stated that: "The Works, particulars whereof are given overleaf, are to be carried out by you according to the General Conditions also given overleaf.....The Lease will not be granted until the works have been carried out to my satisfaction." This was to the satisfaction of Colonel Blount, the Estate's surveyor. Particulars of the Works "to be completed by 6th April 1924" were set out in the agreement.

22] Mr Belcher stated that the Particulars of Works in the agreement were for the most part generalised and required the building of 'a substantial brick and stone building as a dwarf house of superior character to consist of basement ground floor one square storey and attic storey'. Where the building operations impinged on the adjacent premises at No. 1 Devonshire Place, specific directions were included. These showed some variations from

the requirements specified in the 1916 lease and were further changed in the course of building.

23] 25th April 1923 – Letter from BS & G to Col Blount on behalf of Waterhouse & Co asking whether the Lessee of 1 Devonshire Place needed to carry out certain works at the rear of the premises now that Mr Tresidder is going to rebuild the mews building.

24] 27th April 1923 – Letter from Col Blount to BS & G saying he is expecting plans of Tresidders' proposals for rebuilding the mews building and will communicate about the point raised after that.

25] May 1923 – Notice given to District Surveyor – building began.

26] About June 1923 – Mews building demolished. Construction of 1A Devonshire Place began in the summer of 1923.

27] 30th August 1923 – Letter from BS & G to Blount suggesting that release from covenants should only be given after alterations to the rear are carried out.

28] September 1923 to January 1924 – correspondence about details of the works.

29] 6th October 1923 – Mr Tresidder died.

30] 12th October 1923 – Letter from Nicholls & Hughes [Architects] to Blount enclosing sample of slates proposed to be used.

31] 12th October 1923 - Letter from Blount to Nicholls & Hughes approving the sample of slate. Mr Van Sickle suggests that roofing in was either underway or imminent by October 1923.

32] 19th October 1923 – Letter from Nicholls & Hughes to Blount enclosing detail of iron railings for approval.

33] 22nd October 1923 – Letter from Blount to Nicholls & Hughes approving the railing details.

34] 16th November 1923 – Mr Tresidder's will was proved. Mr Vardon was appointed sole executor and trustee. The estate was to be sold and the proceeds invested in trust for Mr Tresidder's children. Mr Vardon therefore succeeded to the 1885 lease, the 1916 lease for 10 years, and the contract or agreement for lease of March 1923.

35] 24th January 1924 - Letter from Blount to BS & G confirming that alterations to back building at 1 Devonshire Place had been carried out to his satisfaction (these were different works than those referred to in the Particulars of Works) and that covenants referred to in BS & G's letter of 25th April 1923 could be released.

36] February 1924 – 1A Devonshire Place notified as complete to the District Surveyor.

37] 4th March 1924 – Letter from Parker, Garrett & Co to the Estate advising that Miss Bolton M.D. was negotiating to purchase the future lease of 1A Devonshire Place.

38] 24th March 1924 – Letter from Blount to Nicholls & Hughes to arrange inspection in order to take measurements for the lease plan.

39] 25th March 1924 – Letter from Nicholls & Hughes to Blount confirming appointment for 2.30 Friday next.

40] 3rd April 1924 – Letter from BS & G to Blount "we are being pressed for the draft lease" crossed with Blout's letter forwarding the tracings.

41] 3rd April 1924 – Letter from Blount to BS & G enclosing tracings.

42] 4th April 1924 - Letter from BS & G to Blount acknowledging receipt of tracings for the draft lease of 1A Devonshire Place, asking whether premises to be included in the new lease exactly coincide with the premises hatched blue on the plan to the lease to Mr and Mrs Shore Nightingale.

43] 6th April 1924 – Mr Belcher's conclusion was that the works specified in the agreement had been completed by 6th April 1924. He noted that Mr Blount's assistant went into the property in the end of March to do the plans and had he thought that something needed doing he would not have proceeded to prepare the lease plans. Mr Van Sickle stated in his oral evidence that he did not know what the state of the property was on 6th April 1924.

44] 7th April 1924 – Letter from the Estate to BS & G confirming that the premises to be included in the new lease coincided with the premises shown hatched blue in the lease to

Mr and Mrs Shore Nightingale except that the new lease would contain a larger forecourt than in the earlier lease. The formation of the additional forecourt was agreed with the Borough Council and was now incorporated with and forms a continuation of the forecourt shown on the blue portion of the plan.

45] 7th April 1924 – Letter from Blount to Parker Garrett & Co confirming licence to practice would be granted for Miss Bolton if she purchased the lease.

46] 15th April 1924 – Letter from BS & G to Blount requesting planned skins for engrossing (parchment skins with plans drawn on them).

47] 28th April 1924 – Letter from Blount to BS & G enclosing planned skins.

48] 14th May 1924 – Letter to BS & G to Blount confirming that lease has been executed and asking whether it can be handed over to the lessee.

49] 15th May 1924 – Letter from Nichols & Hughes to Blount enclosing key to the front door.

50] 15th (Thursday) or 16th May (Friday) 1924 – final inspection by the Estate.

51] 16th May 1924 – Letter from Blount to Nichols & Hughes returning the key and commenting that there were no bolts on the front entrance, the floor boards in the hall were buckling and that the wood block flooring in the kitchen was not quite satisfactorily laid. Mr Van Sickle described these items as "snagging" concerns or minor items. However, he suggested in oral evidence that having regard to the details shown on the plans, for example detail of the floor, picture rail and skirting, it appeared that the Estate was concerned with detail. Mr Belcher agreed with the word "snagging" to describe those matters referred to in Col Blount's letter.

52] 19th May 1924 (Monday) – Letter from Blount to BS & G (in reply to their letter of 14th May) saying that apart from one or two items the rebuilding had been carried out to his satisfaction so that the lease could now be handed over.

53] 21st May 1924 – The 1924 lease was granted by the Estate to Mr Vardon. The 1924 lease was granted "In consideration of the outlay made by the Lessee in rebuilding the premises intended to be hereby demised.....".

54] Mr Van Sickle concluded that 1A Devonshire Place was fully completed, that is to the point of being lettable and habitable, prior to 21st May 1924.

55] 5th June 1924 – Letter from Parker Garrett & Co to Estate stating that Miss Bolton (M.D.) has completed the purchase of the 1924 lease.

56] 18th July 1924 – Miss Bolton in occupation.

SUBMISSIONS

13. The relevant statutory provisions contained in the Act are as follows:

Section 2(1)
"For the purposes of this Part of this Act, "house" includes any building designed or adapted for living in and reasonably so called, notwithstanding that the building is not structurally detached, or was or is not solely designed or adapted for living in....."

Section 3(1)
"a tenancy granted for a term of years certain exceeding twenty-one years"

Section 3(3)
"Where the tenant of any property under a long tenancy, on the coming to an end of that tenancy, becomes or has become tenant of the property or part of it under another long tenancy, then in relation to the property or that part of it this Part of this Act.... shall apply as if there had been a single tenancy granted for a term beginning at the same time as the

term under the earlier tenancy and expiring at the same time as the term under the later tenancy."

Section 9(1A)
"Notwithstanding the foregoing subsection, the price payable for a house and premises -
.....
shall be the amount which at the relevant time the house and premises, if sold in the market by a willing seller, might be expected to realise on the following assumptions –
.....
(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;"

Section 37(1) (f)
"tenancy" means a tenancy at law or in equity....."

14. The Applicant contended that only Stage 1 works should be disregarded. The Respondents contended that all three stages of improvement fall to be disregarded in the valuation exercise. These are, in reverse chronological order:-

Stage 1 works	Works carried out since the grant of the 1924 lease.
Stage 2 works	Works carried out prior to the 1924 lease involving the demolition of the building then on the site and the construction of the present house.
Stage 3 works	Works carried out between 1885 and March 1923 involving certain conversion works.

Stage 1 works

15. It has been agreed by the parties' valuers that the disregard of Stage 1 works leads to an enfranchisement price of £1,636,100.

Stage 2 works

Applicant's Case – (Stage 2 works)

16. Miss Holland stated that works undertaken prior to the grant of the 1924 lease could only be taken into account if there is a 'link back' under Section 3(3). She submitted that Section 3(3) does not apply so as to allow the stage 2 works to be taken into account for 2 reasons:

1] Section 3(3) does not apply because there was no link back as there was a gap.
For Section 3(3) to apply the situation must be one where there is a tenant under a long tenancy who, on the coming to an end of that tenancy, becomes a tenant under a new long tenancy. In this case, the new tenancy was granted on 21st May 1924 whereas the previous tenancy had expired on 6th April 1924. Accordingly there was no grant of a new tenancy on the coming to an end of the previous tenancy.
Miss Holland stated that to overcome this problem the Respondents sought to rely upon the definition of "tenancy" in Section 37 to include a tenancy "in equity". The Respondents claimed that the agreement dated 13th March 1923 for the grant of the new tenancy

constituted such a tenancy "in equity" which came to an end on the grant of the 1924 lease on 6th April 1924.

Miss Holland submitted that this argument is wrong because:

(a) The agreement did not give rise to a tenancy "in equity". The grant of the lease was made conditional upon the works having been carried out to the satisfaction of Colonel Blount, surveyor for the landlord. There was accordingly no specifically enforceable agreement for a lease and hence no tenancy "in equity" until such works had been carried out to the satisfaction of Colonel Blount. The works were never carried out to the satisfaction of Colonel Blount prior to the grant of the 1924 lease. She referred to letter dated 19th May 1924 from Colonel Blount to BS&G. Miss Holland referred to a passage in Hague's Leasehold Enfranchisement at para 9-30 and the quotation therein from the judgment of Lord Justice Parker in Mayhew v Free Grammar School of John Lyon [1999] 2 EGLR 89 at 92C to support her approach.

(b) The contract, even if it could be a tenancy "in equity", was not a "long tenancy" within the meaning of Section 3(1) of the Act. In dealing with enfranchisement rights and whether there is a link back there must be a long tenancy as defined by the Act. She submitted that definition of a long tenancy requires there to have been an express grant and stated that the Respondents cannot point to an express grant.

(c) The Respondents have not shown that the "tenant", on the coming to an end of the tenancy created by the agreement, was the same as the tenant under the 1924 lease. The Respondents rely upon the benefit of the agreement having become vested in Mr Vardon as executor of the estate of Mr Tresidder. She submitted that there was nothing to show that Mr Vardon took the lease in his capacity as executor. If he took the 1924 lease in his personal capacity, the tenant under the tenancy created by the contract was not the same as the tenant under the 1924 lease and Section 3(3) does not apply.

Following the hearing the Tribunal was provided by the Applicant's Solicitors with a copy of the decision in 52 Hamilton Terrace (LON/LVT/1482/02) dated 19th November 2002 under cover of a letter dated 20th December 2002. The Tribunal's view, expressed in paragraph 30 of that decision, was that in order to prove linkage under Section 3(3), it is necessary for the old and new leases to be held by the tenant in the same capacity. In that case a lease was vested person in the capacity of sole executrix and trustee who subsequently surrendered the lease and took a new lease in a personal capacity.

2] Section 3(3) does not apply because a larger area demised by the 1924 lease than previously
Miss Holland submitted that Section 3(3) does not apply because it operates where the tenant of "any property" becomes the tenant of "the property or part of it" under the next long tenancy. The 1924 lease demised a different and bigger area. She stated that this is to be seen from comparing the area of property demised on the lease plans and having regard to the contemporaneous correspondence.

17. The demolition and reconstruction in the Stage 2 works prior to the grant of the 1924 lease **were not** works carried out by the tenant or his predecessors in title "at their own expense" within the meaning if Section 9(1A)(d)
Miss Holland submitted that the demolition and reconstruction works involved at Stage 2 were contracted to be undertaken pursuant to the 1923 contract and as consideration for the grant of the 1924 lease. She submitted that it is clear law as a result of the Court of Appeal

decision in Rosen v Trustees of the Camden Charities [2001] 2 All ER 399, that Section 9(1A)(d) does not cover works carried out as part of the bargain for the grant of the lease. She submitted that this applied in the present case as the 1924 lease was expressly granted "in consideration of the outlay made by the said lessee in rebuilding the premises intended to be hereby demised" and having regard to the fact that these rebuilding obligations had been expressly required under the 1923 agreement.

18. The Stage 2 works of demolition and reconstruction are not capable of being treated as works of improvement within Section 9(1A)(d) because the works were for the provision and creation of a "house" and as such, do not constitute an "improvement" within the meaning of Section 9(1A)(d).
Miss Holland submitted that Rosen provides Court of Appeal authority to the effect that works constituting the provision and creation of a house cannot be an improvement within Section 9(1A)(d).
She submitted that prior to the Stage 2 works, the premises on the site did not constitute a house. Under Section 2(1), a building is only a "house" if it is "reasonably so called". She submitted that the building in existence prior to the Stage 2 works could not reasonably be called "a house" and that evidence showed that the mews building was 'stables' reasonably so called. She pointed out that nowhere in the documents is it described as a 'house'.
She submitted that the works constituted the provision and creation of a house and not an improvement of an existing house.

19. In any event, demolition and reconstruction works cannot constitute "improvements" for the purposes of Section 9(1A)(d).
Miss Holland submitted that demolition and reconstruction per se cannot constitute improvement.
She accepted that the Lands Tribunal had commented in Rosen that demolition and reconstruction could constitute works of improvement falling within Section 9(1A)(d), but submitted that this was obiter. She suggested that the comment was distinguishable because the case concerned a bare site. She also submitted that it was wrong because on its true construction Section 9(1A)(d) is intended to cover only improvements to an existing house.
Miss Holland pointed out that Lord Justice Evans Lombe, in his judgment in the Court of Appeal, was at pains not to deal with the position of the demolition of an existing house and construction of a new house. She pointed out that he neither referred to nor quoted the obiter comment in the Lands Tribunal.

Respondents' case (Stage 2 works)
Mr Johnson for the Respondents contended that:

20. There is a link back under Section 3(3) - there was no gap

(a) So far as the claim to disregard the works carried out to the property prior to the grant of the 1924 lease are concerned, the Respondents accept they must demonstrate that the 1885 lease can be linked to the 1924 lease. The Respondents' case is as follows:
(1) Section 3(3) of the Act permits two or more long leases to be treated as a single lease where the necessary identity of tenant can be shown between the old lease and the new lease.
(2) An equitable lease qualifies as a lease for the purposes of the Act.
(3) The relevant long leases in the present case are:
(i) The 1885 lease.
(ii) The equitable lease created by the contract.

(iii) The 1924 lease.

(4) The 1885 lease came to an end on 6th April 1924. As at that date the tenant under the 1885 lease was Mr Vardon.

(5) As at 6th April 1924 Mr Vardon held, pursuant to the contract, the 1924 lease in equity.

(6) As at the date when the 1924 lease was granted (21st May 1924) Mr Vardon still held the 1924 lease in equity.

(7) The 1924 lease was granted to Mr Vardon.

(8) Accordingly the necessary identity of the tenant can be shown for the purposes of Section 3(3) of the Act.

Mr Johnson referred to Hague on Leasehold Enfranchisement Third Edition paragraph 3-03 "The primary definition of a "long tenancy" is a tenancy originally granted for a term certain exceeding 21 years..... That a grant is in equity is immaterial (s.37(1)(f)), and it is considered that if there was a specifically enforceable prior agreement for a lease, the term commences on the date when it first became specifically enforceable. For this purpose, however, there must be a fully concluded and legally binding agreement.....Furthermore, if the prior agreement is conditional upon some act or event occurring, the agreement is not specifically enforceable, and no equitable tenancy arises before the condition is fulfilled (Cornish v Brook Green Dry Cleaners Ltd [1959] 1 Q.B. 394. CA."

Mr Johnson urged the Tribunal to adopt a common sense approach to 6th April 1924 position and draw inferences from the facts. For example, would the executor press for the lease if the works were not done? [See letter 3rd April 1924].

Mr Johnson stated that the decision in Rosen prevented him from arguing that there was an equitable tenancy when the agreement was entered into. Working with Rosen he submitted that the contract was specifically enforceable on 6th April 1924. It is not suggested in the correspondence that the work had not been done or that there was something wrong with the work, save only the snagging items. He submitted that on 6th April 1924 specific performance would have been available as a remedy, the snagging items not providing Colonel Blount with sufficient grounds for non-satisfaction.

(b) As to Miss Holland's point that there was no grant of a tenancy in equity, Mr Johnson contended that there was nothing in Section 37(1) (f) that excludes any of the ways that a tenancy in equity can be 'granted'. He submitted that it was granted by 6th April 1924. If he did need to show an express grant it was by the 1923 agreement.

(c) Mr Johnson submitted that the evidence pointed to the conclusion that Mr Vardon, as executor and trustee of Mr Tresidder, continued with the agreement and entered into the 1924 lease in that capacity. There is no evidence to show that he took the 1924 lease in any other capacity than that of executor and trustee. If he had taken this valuable lease in his personal capacity it would have constituted the most unlikely gross breach of trust. Mr Johnson submitted that the works of demolition and construction were funded first by Mr Tresidder and then by Mr Vardon as his executor and trustee.

Following the hearing, the Respondents' Solicitors commented on the decision in Re: Hamilton Terrace dated 19th November 2002. In a letter dated 14th January 2002 the Respondents' Solicitors made further written representations on the point raised. Mr

Johnson submitted that in the current case on the facts there was identity of both tenant and capacity.

21. Section 3(3) applied where the 1924 lease demised a larger area than previously demised.
As to Miss Holland's submission that there was no identity of property. Mr Johnson submitted that the fact that an additional piece of property was demised under the 1924 lease was neither here nor there. The tenant was the tenant of the property previously demised with an additional piece added. This satisfied the criteria.

22. The demolition and reconstruction works involved in the Stage 2 works prior to the grant of the 1924 lease were works carried out by the tenant or his predecessor in title "at their own expense" within the meaning of Section 9(1A)(d).

Mr Johnson stated that an argument of this kind had been accepted by Evans Lombe L.J. in Rosen, but that this part of the decision in Rosen was obiter and was not relevant. He submitted that if the Respondents are right on the linkage point, the Tribunal is required by Section 3(3) to treat the 1885 lease, the equitable lease and the 1924 lease as one single lease, a seamless whole, commencing when the 1885 commenced and terminating when the 1924 lease terminates. The Tribunal is not permitted to treat the 1924 lease as a separate lease granted pursuant to a separate contract. The wording of Section 3(3) does not permit this. The Tribunal cannot treat the 1885 lease, the equitable lease and the 1924 lease as a single lease pursuant to Section 3(3), but at the same time notionally de-couple the 1924 lease so that it can be treated as a separate lease granted in exchange for the demolition of the mews building and the construction of the 1A Devonshire Place.

23. The Stage 2 works of demolition and reconstruction are capable of being treated as works of improvement within Section 9(1A)(d) as this constituted a house replacing house.
Mr Johnson referred to the 1923 plans produced by Mr Belcher and submitted that what was shown as existing in 1923 could reasonably be called a house. Other contemporaneous descriptions used to describe the property did not mean that it could not reasonably be called a house.
Mr Johnson accepted that if the property could not reasonably be called a house prior to the 1923/4 works then the Respondents had a problem with the Rosen decision. He reserved the Respondents' position as to the correctness of that decision.

24. Demolition and reconstruction works can constitute "improvements" for the purposes of Section 9(1A)(d)
Mr Johnson submitted that in Rosen the Court of Appeal held that the construction of a new house on a bare site did not qualify as work of improvement falling within paragraph (d). He submitted that this part of that decision is not relevant to the present case. In the present case, while a new house was constructed on the property, it replaced an existing house within the meaning of the Act. The relevant improvement works comprised demolition of one house and its replacement by a more valuable house. In Rosen the Lands Tribunal expressly commented that works which comprised the replacement of a house could constitute works of improvement falling within paragraph 9(1A)(d). The Court of Appeal did not express any disagreement with this statement. Mr Johnson mentioned other Leasehold Valuation decisions in which it had been accepted that demolition and reconstruction can constitute improvement.

Stage 3 works

Applicant's case – (Stage 3 works)

25. Miss Holland stated that this point in the arguments is only reached if the entirety of the landlord's arguments in relation to the Stage 2 works are wrong.
Miss Holland submitted that the Respondents are not entitled to a disregard of the Stage 3 works for the following reasons:

26. The Stage 3 works of conversion are not works of "improvement" within the meaning of Section 9(1A)(d) because the effect of such works was taken away as a result of the 1923 demolition works [the obliteration point]
Miss Holland submitted that the Stage 3 works were essentially obliterated by the 1923 demolition works. The Act treats the activities of "the tenant or his predecessors in title as a single whole". Therefore questions of what "improvements" have occurred and how they have increased value must be determined as at the valuation date. See. Shalson v Keepers and Governors of the Free Grammar School of John Lyon [2002] 3 All ER 1119.
Miss Holland asked the question; how can it be said that value of the property increased by something obliterated? She invited the Tribunal to look at the works that, at the valuation date, have improved the property. It cannot be said that works between 1883 and 1923 have improved the property because these works were pulled down in 1923.

27. There is no evidence to show that the Stage 3 works of conversion were carried out by the tenant or his predecessor in title at "their own expense" so as to fall within Section 9(1A)(d).
Miss Holland submitted that there was no evidence whatsoever to show that the Stage 3 works were carried out at the expense of the tenant or his predecessor in title. She submitted that it would be a fundamental error to go down the road of inference suggested by Mr Johnson.

28. The Stage 3 works are not capable of being treated as works of improvement within Section 9(1A)(d) because the works led to the creation of a "house" rather than an improvement to a "house" and as such, do not constitute an "improvement" within the meaning of Section 9(1A)(d).
If, contrary to the Applicant's contentions, the property constituted a "house" in 1923, the property as it existed prior to the Stage 3 works did not constitute a "house" and such works are outside Section 9(1A)(d). The premises were stables and were always described as stables, in disuse and probably uninhabited until 1896.

29. There is no evidence to show that the Stage 3 works were undertaken by a relevant "predecessor in title" under a "long tenancy", as required for the combined operation of Section 3(3) and Section 9(1A)(d).
Miss Holland submitted that the Respondents had failed to discharge the evidential burden of showing that the Stage 3 works were carried out by the tenant under the 1885 lease. Mr Johnson had accepted that the evidential burden of proof lay on the Respondents to satisfy the criteria. Miss Holland submitted that there was no evidence to show that the works were carried out at the expense of the tenant or predecessor in title. There was no evidence of who had paid. There were a number of candidates for who had paid and it was more likely that Miss Spencer Bell did not pay. She suggested that the works may have been paid for by Mr Shore Nightingale, by other beneficiaries of the will, or the by coachman.

Miss Holland further submitted that the 1916 lease did not constitute a long tenancy. The only right to occupation from 1916 to 1923 was under the 1916 lease, which was for the

term of 10 years and was not a long tenancy. The 1916 lease was granted subject to the 1885 lease, but must have been carved out of it. Therefore any works done in that period cannot be works of improvement for the purpose of disregard as they were not works done under a long tenancy.

30. The Tribunal should not take account of the Stage 3 works because on the true construction of Section 3(3) it is not possible to link back more than one lease.
Miss Holland submitted that it was not possible to join together more than two consecutive long tenancies and create a chain under Section 3(3).
She submitted that this is the proper interpretation of Section 3(3) having regard to the contrasting provision in Section 3(2). This provides:
"Where the tenant of any property under a long tenancy at a low rent... on the coming to an end of that tenancy, becomes or has become tenant of the property or part of it under another tenancy..., then the later tenancy shall be deemed for the purposes of this Part of this Act, including any further application if this subsection, to be a Long Tenancy irrespective of its terms".
Accordingly, in Section 3(2), the linking of more than two tenancies is expressly provided for by the inclusion of the phrase "including any further application of this subsection". A similar point can be made in relation to Section 3(4) which refers to tenancies which have been "once or more renewed". She submitted that the wording of these other sections demonstrates that no such link back should be permitted under Section 3(3).

Miss Holland invited the Tribunal to reach this conclusion notwithstanding the Tribunal's contrary decision in Re: 52 Hamilton Terrace (LON/LVT/1482/020) dated 7th August 2002 that it was possible to link back more than one lease.

Respondents' case – (Stage 3 works)

31. The obliteration point
Mr Johnson submitted that both the works of conversion completed prior to the agreement and the demolition and reconstruction, should be taken account of as increasing the value at the valuation date.
He submitted that if the Respondents are right about linkage back to 1885, then the Tribunal should consider how what was on the site was increased in value since 1885. The principle in Shalson is to look at the activities over the whole lease.

32. It should be inferred from the facts that the Stage 3 works of conversion were carried out by the tenant or his predecessor in title at "their own expense".
See paragraph 34 below.

33. The works were works of improvement to an existing house (the original mews building) and constituted an improvement within the meaning of Section 9(1A)(d). Mr Johnson invited the Tribunal to apply the reasonably so called test.

34. The Stage 3 works were carried out by a "predecessor in title" under a "long tenancy" under the Act.
By a predecessor in title:
Mr Johnson submitted that he only had to prove his case on a balance of probabilities. He invited the Tribunal to draw inferences from the facts. The historical experts accepted that the Stage 3 works had been carried out by the early part of the 20th century. It was most

likely that the works were done at the expense of the tenant for the time being. He did not accept Miss Holland's suggestion that just because the tenant at the time was a woman that she did not pay for the work. Even if some third party benefactor paid, then the onus was on the Applicant to identify that person, which it had failed to do. Mr Johnson pointed out that this criteria was not likely to cause the tenant any great difficulties in respect of recent works where no doubt evidence of the expense incurred could be produced. However a tenant might again face difficulties over historic works. He referred to a passage in Leasehold Enfranchisement from the Property and Conveyancing Library. In this it was stated that the natural assumption in such circumstances would be that any works carried out during the term of the tenancy would have been paid for by the tenant, unless the landlord has any evidence to suggest otherwise. Mr Johnson submitted that no such evidence had been produced.

Under a long tenancy:

The 1916 lease was granted subject to the 1885 lease and therefore the right of occupation was under the 1885 lease. However, Mr Johnson added that the Respondents did not have to show a lease that confers a right of occupation.

35. The Tribunal should take account of the Stage 3 works because on the true construction of the Act it is possible to link back more than one lease.

Mr Johnson submitted that more than two long tenancies could be linked under Section 3(3). He contended that there was nothing in the terminology of Section 3(3) to exclude the linking of more than two long tenancies. There was not much to be gained from comparing and contrasting Section 3(2) and Section 3(3), because that is talking about a shorter tenancy which follows a long tenancy and needs a deeming provision in order to work. He stated that support for the Respondents' view is found from the Editors of Hague at page 60: "There is some doubt as to whether or not it is possible to join together more than two consecutive long tenancies and thereby create a chain ..... Section 3(3) does not need a deeming provision in order to work and if it is possible to go back one tenancy for the purpose of Section 9(1A)(d) there is no inherent reason why it should not be possible to go back over a chain. Although the matter is not beyond doubt, it is considered that Section 3(3) can be used to join together as many earlier tenancies as fulfil the conditions."

Mr Johnson referred to the decision of the Leasehold Valuation Tribunal in Re: 52 Hamilton Terrace dated 7th August 2002. In that decision it was held that the Tribunal were satisfied that more than two leases could be linked under Section 3(3).

DECISION

36. The Tribunal finds that there was no gap to prevent section 3(3) applying. There was a tenant under a long tenancy who, on the coming to the end of that tenancy, became a tenant under a new long tenancy.

1]

(a) The agreement dated 13th March 1923 for the grant of a new tenancy constituted a tenancy in equity that came to an end on the grant of the 1924 lease.

The agreement was conditional upon the works referred to in the contract dated 13th March 1923 being carried out to the satisfaction of Colonel Blount. The Tribunal finds that the available evidence points to the conclusion that the condition was satisfied by 6th April 1924. On a balance of probabilities, the Respondents have discharged the burden of proof that the condition was satisfied by that date. Accordingly, the agreement was specifically

enforceable and a tenancy in equity existed on 6th April 1924. The Tribunal has had regard to the submissions of the parties and the evidence including the following:

(i) Mr Belcher's conclusion was that the works specified in the contract had been completed by 6th April 1924. Mr Van Sickle said that he did not know what the condition of the property was at that date, although he was satisfied that 1A Devonshire Place was fully completed to the point of being lettable and habitable prior to the 21st May 1924.

(ii) Mr Belcher noted that Colonel Blount's assistant went into the property at the end of March 1924 to prepare plans. In Mr Belcher's view, had there been outstanding work of anything but a snagging nature, the assistant would have informed Colonel Blount.

(iii) BS & G [the Estates Solicitors] wrote to Colonel Blount on 3rd April 1924, stating that they were being pressed for the draft lease. It is unlikely that Mr Vardon, the executor, would have pressed for the draft lease if the works were incomplete.

(iv) The lease had been executed by the 14th May, but not handed over pending final inspection. The final inspection by the Estate took place on Thursday or Friday the 15th or 16th May 1924. The comments were that there were no bolts on the front entrance, the floor boards in the hall were buckling and that the wood block flooring in the kitchen was not quite satisfactorily laid. On the following Monday 19th May 1924, Colonel Blount wrote to the BS & G stating that apart from one or two items the rebuilding had been carried out to his satisfaction so that the lease could now be handed over. Both Mr Belcher and Mr Van Sickle referred to these items as "snagging" concerns. The snagging items were considered by Colonel Blount, despite the Estate's interest in detail, as so small and unimportant as to be irrelevant to the grant of the lease. There is no evidence that there were any other items outstanding as at 6th April 1924.

(b) The Tribunal agrees with Mr Johnson that Section 37(1)(f) does not exclude any of the ways in which a tenancy in equity can be 'granted'. The Tribunal finds that reading together Section 3(1) and Section 37(1)(f), it is not necessary to have an express grant. The Tribunal finds that the tenancy in equity was 'granted' within the meaning of Section 3(1) by 6th April 1924.

(c) The Tribunal finds that there was both identity of tenant and identity of capacity. The Tribunal finds that the identity of the tenant (Mr Vardon) on the coming to an end of the tenancy created by the agreement, was the same as the tenant (Mr Vardon) under the 1924 lease. The Tribunal also finds Mr Vardon was tenant in both cases in the capacity of executor and trustee under the will of Mr Tresidder. There is no evidence to point to a change in capacity of Mr Vardon to his personal capacity. The Tribunal agrees with the submissions of the Solicitors for the Respondents that had this occurred it would have amounted to a surprising breach of trust, in the absence of any explanation. The 1924 lease was only vested in Mr Vardon for a short period before it was assigned to Dr Bolton, the arrangements for which were in place by about March 1924. This is consistent with Mr Vardon becoming the tenant of the 1924 lease in the capacity of executor and trustee in order to complete the building started by Mr Tresidder and to arrange the sale to Dr Bolton.

The facts can be distinguished from those found in the LVT decision on 52 Hamilton Terrace referred to above. In that case the leasehold interest held in the capacity of executrix and trustee and surrendered in that capacity was quite separate from the new lease taken in what the Tribunal found was a personal capacity. In the present case the interests which devolved on Mr Vardon were the 1916 lease, subject to the 1885 lease and the contract or agreement for lease of 1923. The latter, on completion of the building obligation started by Mr Tresidder, led directly to the grant of the 1924 lease. These

interests were linked and not comparable to the two separate interests found in Hamilton Terrace.

2] The Tribunal finds that the demise of a larger area than previously does not prevent Section 3(3) from applying. Section 3(3) operates where the tenant of "any property" becomes the tenant of "the property or part of it" under the next long tenancy. The same property was demised with an additional area [see letter dated 7th April 1924 from the Estate to BS&G]. The tenancy therefore included "the property", the tenant became the tenant of "the property" and satisfies the criteria in Section 3(3).

37. Whether the demolition and reconstruction in the Stage 2 works prior to the grant of the 1924 lease works carried out by the tenant or his predecessors in title "at their own expense" within the meaning of Section 9(1A)(d).

Rebuilding obligations were expressly required under the 13th March 1923 agreement between Mr Tresidder and the Estate. As part of the contract Mr Tresidder agreed to demolish the mews building and construct 1A Devonshire Place. The 1924 lease was expressly granted "in consideration of the outlay made by the said lessee in rebuilding the premises intended to be hereby demised".

The Tribunal agrees with Miss Holland's submissions that as a result of the Court of Appeal decision in Rosen v Trustees of the Camden Charities that Section 9(1A)(d) does not cover works carried out as part of the bargain for the grant of the lease. The works were carried out in pursuance of an agreement and the equivalent value received by the tenant in the form of the 1924 lease. The Tribunal finds that the Stage 2 works were not carried out by the tenant or his predecessors in title "at their own expense" within the meaning of Section 9(1A)(d).

An argument of this nature (Section 9(1A)(d) does not cover works carried out as part of the bargain for the grant of a lease) had been accepted by Evans Lombe L.J. in Rosen. Mr Johnson stated that this part of the decision was obiter and was not relevant. He argued that if the Respondents are right on the linkage point the Tribunal is required under Section 3(3) to treat the 1985 lease, the equitable lease and the 1924 lease as a seamless whole. Therefore it was irrelevant that works were carried out as part of the bargain for the grant of the 1924 lease.

The Tribunal considers that the actual circumstances in which the 1924 lease was granted cannot be ignored when considering the question of whether the works were carried out by the tenant or his predecessors in title "at their own expense". The Tribunal considers that Mr Johnson's interpretation of Section 3(3) read together with Section 9(1A)(d) would undermine the purpose of Section 9(1A)(d).

38. In view of the Tribunal's decision in relation to the above issue, the Tribunal finds that only the Stage 1 works, being works undertaken since the grant of the 1924 lease, are to be disregarded. Therefore, in accordance with the agreement between the parties valuers, the appropriate basis of valuation is "A" and accordingly the enfranchisement price is £1,636,100.

39. In view of the full and detailed arguments expressed by the parties, the Tribunal, although not necessary for the purposes of the determination, comments on the outstanding points as follows:

1] Having regard to the evidence of Mr Van Sickle and Mr Belcher, and in particular the plans at Tab 1 of Mr Belcher's Report, the Tribunal considers that the mews house and original mews house each comprised a house reasonably so called within the meaning of Section 2(1).

2] The Tribunal considers that the works of demolition and reconstruction carried out in 1923/24 were on the facts so substantial that they constituted the provision and creation of a house of a totally different character and scale to that previously on the site. The Tribunal considers that having regard to the nature, scale and product of the works, this did not constitute an improvement for the purposes of disregard within Section 9(1A)(d).

3] The Tribunal agrees with Mr Johnson that it is possible under Section 3(3) to link back more than one lease if they fulfil the criteria. The Tribunal's view is that no deeming provision is necessary and there is nothing in the wording of the Section to prevent such construction.

4] The Tribunal considers that the works the Stage 3 works were obliterated by the 1923 demolition works and therefore cannot be reflected in the value of 1A Devonshire Place at the valuation date and were not an 'improvement' for the purposes of Section 9(1A)(d).

DETERMINATION

40. The Tribunal determines that the enfranchisement price under Section 9(1C) of the Act is £1,636,100 in accordance with the agreed valuation "A" appended to this decision.

Chairman... Anne Seifert

Date... 3rd March 2003

HOWARD DE WALDEN ESTATES

Appendix A

LEASEHOLD REFORM ACT 1967 AS AMENDED

Property: 1a Devonshire Street, W1

Date of Claim: 22nd June 2001

Unexpired term of lease: 1.780 years

VALUATION IN ACCORDANCE WITH SECTION 9(1C) OF THE LEASEHOLD REFORM ACT 1967

Assuming Existing House (excluding tenants' improvements undertaken since 1924)

Valuation of lessor's interest exclusive of marriage value			£	£	£
For remainder of term-					
Ground rent currently payable			55.00		
Years Purchase for 1.780 years @		5.0%	1.66		
				91	
Value of freehold interest with vacant possession			1,750,000		
Deferred 1.780 years @		6.0%	0.9015		
				1,577,625	
					1,577,716
Add lessor's share of marriage value					
Value of freehold interest with vacant possession				1,750,000	
less					
Value of lessor's interest exclusive of marriage value			1,577,716		
Value of lessee's interest exclusive of marriage value			75,000		
				1,652,716	
Gain marriage				97,284	
Landlord's share @ 60.00%					58,370
Enfranchisement price					1,636,086
				SAY	1,636,100