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LON/LVT/1482/02

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

# DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S9 OF THE LEASEHOLD REFORM ACT 1967

**Re 52 Hamilton Terrace, London NW8**

Applicant: John Lyon's Charity (landlord)

Respondent: Mr I S Rapp (tenant)

Date of hearing: 6 August and 23 and 24 September 2002

Appearances:

Mr K S Munro (counsel)
Mr D Greenish (Pemberton Greenish, solicitors)
Mr J E C Briant BA MRICS (Cluttons, chartered surveyors)

for the landlord

Mr E Johnson (counsel)
Mr D Conway (David Conway & Co, solicitors)
Mr K G Buchanan BSc(Est Man) MRICS (Colliers CRE, chartered surveyors)
Mr V Belcher MA

for the tenant

Members of the leasehold valuation tribunal:

Lady Wilson
Mr F W J James FRICS
Mr J M Power MSc FRICS FCIArb

Date of the tribunal's decision: 19 NOV 2002

**Background**

## 1. General

1. This is a claim for the freehold of 52 Hamilton Terrace, a four storey linked detached house which is listed Grade II, and is held on a lease dated 27 May 1993 for a term of years expiring on 24 June 2067.

2. All matters affecting the valuation are agreed between the parties save the following, as defined by the parties' solicitors and revised by counsel at the hearing, which are the only issues which the tribunal is asked to determine:

(i) whether, for the purpose of the claim, "the tenancy" of the property is, by virtue of section 3(3) of the Leasehold Reform Act 1967 ("the Act"), a single tenancy:

a. beginning on 24 November 1838 and expiring on 24 June 2067,
b. beginning on 23 February 1922 and expiring on 24 June 2067, or
c. beginning on 29 September 1957 and expiring on 24 June 2067.

(ii) whether, for the purpose of the statutory valuation to be carried out in accordance with section 9(1C) of the Act, any of the following works carried out to the property are improvements carried out by the tenant or his predecessors in title at their expense in accordance with section 9(1A)(d) of the Act:

a. a side extension on lower ground, raised ground, first floor and second floor rear, built about 1900,

b. the enlargement of the floor area of the property at the time of its re-conversion from flats to a single house in about 1993.

3. The premium is agreed between the parties on different bases, depending on the decision which the tribunal reaches on the issues.

4. At the hearing, Mr Munro of counsel represented the landlord and called Mr Julian Briant BA MRICS of Cluttons, chartered surveyors, to give expert evidence on one issue relevant on the nature of the improvements. Mr Johnson of counsel represented the tenant and called Mr Gavin Buchanan BSc (Est Man) MRICS of Colliers CRE, chartered surveyors, on the issue addressed by Mr Briant, and called Mr Victor Belcher MA, an architectural and building historian, to give expert evidence on the history of the buildings and the conclusions to be drawn from it. On 6 August 2002, on the application of Mr Johnson, we adjourned the matter until 23 September 2002 to give those instructing him additional time to research the history and to obtain further documents, and on that date we heard argument as to whether, as a matter of law, more than two leases could be linked for the purpose of section 3(3) of the Act. We decided that any number of leases could be so linked, and our decision on that issue is dated 7 August 2002. Accompanied by the foreman of the building works currently in progress, we inspected the property in the afternoon of 6 August, and, unaccompanied, we inspected all the comparables (the values not having then been agreed). The hearing of the outstanding issues took place on 23 and 24 September.

## 2. The history of the property

5. This account of the relevant history of the property is taken largely from Mr Belcher's report and evidence. None of this account is thought to be in dispute.

6. The property, (first known as 20 Hamilton Terrace and later re-numbered, but referred to as 52 throughout this decision) was built in 1838, at about the same time as the similar neighbouring house now known as 54, with which it forms a pair. On 24 November 1838, a lease of 52 ("the 1838 lease") and a lease of 54 were granted to William Bigg for a term of 96 years from 29 September 1838 until September 1934. 52 then consisted of the core of the present house, without its side addition, but with a detached stable on the southern boundary of the plot. Bigg lived in 52 until his death in 1853, and, by his will, he empowered his trustees to grant underleases for up to 21 years. In 1868 the headleases of 52 and 54 were sold to William Langdon, who died in 1895, leaving the properties to his wife and son, also called William Langdon. Between 1853 and1893, when it was recorded for rating purposes as empty, 52 was occupied by a succession of undertenants, and, in 1859, Mary Bartley was recorded as the incoming occupant. She and her husband, Augustus Bartley, occupied the house until their deaths in, respectively, 1946 and 1952.

7. In 1897 an addition was built to the north side of 54, the owner of the building being recorded in the district surveyor's returns as William Langdon. In 1900 a similar addition was built to the south side of 52, but on this occasion the column for naming the owner of the building was left blank. William Langdon the younger died in 1910, leaving the property in trust for his family. A memorial of a deed dated 24 September 1910 lists various properties which were subject to the Langdon will trusts, and these included 52 and 54. A memorial of an appointment of a new trustee, dated 22 September 1926, did not include them.

8. No record has been found of any surrender or assignment of the 1838 headlease of 52, but on 22 February 1922 a new lease ("the 1922 lease") was granted to Augustus Bartley by the John Lyon Trustees for a term of 51.5 years from 29 September 1921 until 28 March 1973. After Bartley's death in 1952, the lease was assigned to Alfred Kaiser, who lived in the property until he died on 6 December 1956. At some time, but prior to 1958, the property was occupied as

flats.

9. By his will, which was proved on 29 October 1957, Alfred Kaiser left all his property on trust to Sally Trisk, his sole executrix and trustee, on trust for sale with power to postpone the sale. Part of the income was to be paid to a Marion Kaiser and to Sally Trisk, during their lifetimes, in specified shares, and, subject to these trusts, the fund was to go to a charity, the B'nai B'rith Leo Baeck (London) Lodge Trust Fund. Clause 9 of the will gave Sally Trisk the right to use money to be invested under the will for the purchase of any property, including freeholds or leaseholds "intended for occupation or use by any beneficiary" under the will.

10. By a deed of surrender dated 31 December 1957, Sally Trisk, "as Personal Representative of ... Alfred Kaiser" surrendered the 1922 lease as from 28 September 1957. Also on 31 December 1957, she was granted a new lease, at no premium, ("the 1957 lease") for a term of 31 years from 29 September 1957 to 28 September 1988. The lease refers to Sally Trisk as "the Lessee", and makes no reference to the fact that she was the executrix and trustee of Alfred Kaiser's will. By a transfer dated 1 July 1958, Sally Trisk, described in the deed of transfer "as beneficial owner", sold the property to a developer.

11. A report, dated 8 September 1959, by the landlord's surveyors describes the property as then having been vacant for some 18 months and as "deteriorating rapidly". Between 1960 and 1961 the property was converted by the developer as a block of flats.

12. A new lease dated 24 May 1961 for a term of 55 years from 29 September 1960 was granted to Gustav Wilczek; and a further new lease dated 27 May 1993 ("the 1993 lease") was granted for a term of 75 years from 24 June 1992 to Trevor Horn and Jill Sinclair. Trevor Horn and Jill Sinclair had the property reconverted into a single dwellinghouse and extended to the rear. It is accepted on behalf of the landlord that there is continuity between the 1957 lease and these

leases within the meaning of section 3(3) of the Act, and that any improvements carried out after the date of the 1957 lease at the tenants' own expense thus fall to be disregarded in the valuation.

### 3. Section 3(3) of the Act

13. This subsection provides:

*Where the tenant of any property under a long tenancy* [ie exceeding 21 years] , *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.*

### 4. The issues

14. The issues of fact and law which the issues identified by the parties' solicitors require us to determine are these:

(i) has the tenant established that Augustus Bartley became the headlessee of the property prior to the grant to him of the 1922 lease, so that the 1838 lease and the 1922 lease are to be treated as one by virtue of section 3(3);

(ii) a. has the tenant established that the 1957 lease was granted to Sally Trisk in her capacity as executrix and trustee of Alfred Kaiser's will;

b. if that has not been established, and the 1922 lease was surrendered by Sally Trisk in her capacity as executrix and trustee and the new lease was granted to her in her personal capacity, does that prevent the 1922 lease and the 1957 lease from being treated as one by virtue of section 3(3);

(iii) if the tenant establishes that the 1838 lease and the 1922 lease can be linked for the purpose of section 3(3), can he also establish that the side extension was built at the expense of his predecessor in title?

(iv) it not being in dispute that the leases from 1957 onwards may be linked, what, if any, of the works carried out by the then tenant in and about 1995 fall to be disregarded as having been carried out at the tenant's expense?

15. It is accepted that the burden of proof in relation to any factual issues which arise in connection with these questions lies on the tenant. It was accordingly agreed that the tenant's case should be presented first.

**Decision**

**1. Did Augustus Bartley become the headlessee of the property prior to the grant to him of the 1922 lease?**

**The tenant's case**

16. Mr Belcher said that he considered it likely that the Mary Bartley's father was acquainted with William Langdon the elder, because her father, a saddler, had premises in Oxford Street,

close to the premises of Langdon, also a saddler, in Duke Street. The Bartleys' residence in the property began as newlyweds and lasted throughout their lives. The 1838 lease must have been surrendered for a new lease to have been granted to Augustus Bartley in 1922, twelve years before the earlier lease expired, and in his opinion the only reasonable explanation was that the Langdon Trustees must have assigned the 1838 lease to the Bartleys, and that the Bartleys subsequently surrendered the lease to the landlord in return for a longer lease, at an increased rent but at no premium. He said that the fact that there was no registration of any assignment could be explained by the fact that not all assignments of leases were registered at the Middlesex Deeds Register, and it was a moot point whether they needed to be registered, particularly if the term remaining on then lease was 21 years or less. The memorials of assignments by the trustees from 1920 onwards indicated that they were gradually selling the leaseholds which were subject to the will trusts. He said that a likely explanation for the fact that the rate book for the period 1 April to 30 September 1920 records a change, on 16 August, of rated occupier from Mrs to Mr Bartley was that the Langdon Trustees had recently assigned the head lease to him.

17. Cross-examined by Mr Munro, Mr Belcher said that he had not, in his report, mentioned a letter from the Harrow District Land Registry to the tenant's solicitors dated 8 August 2002 because he considered that it must relate to a different property. The letter, which is at tab 17 of the supplemental bundle, is headed "52 Hamilton Terrace" and encloses what purports to be an Office Copy of a receipt given by the solicitors who acted on first registration of title 261620 (which is accepted to be the title number then applicable to 52) at the District Land Registry. The receipt has the title number in manuscript, and a typed list of leases, mortgages, assignments, etc. Mr Munro put to Mr Belcher that the clear implication of the receipt was that the documents listed were those which were lodged with the application for registration of the title. He suggested that the lease of 14 February 1868 was probably an underlease for more than 21 years which had been presented for registration, and that the lease of 30 January 1873 could have been a concurrent underlease. Mr Belcher considered that the documents listed were

inconsistent with all that was known about the history of the property, and the attribution to this title number was an error. Mr Munro also suggested that the 1922 lease was granted reversionary upon the 1838 lease, which continued in the hands of someone other than Mr Bartley, or that Mr Bartley might have agreed with a third party that the 1838 lease should be surrendered by the third party, and the 1922 lease granted to Mr Bartley. Mr Belcher agreed that he had no legal qualifications. He said that in his opinion, not as a matter of law but on the basis of his experience of property history, the 1922 lease would have referred to the 1838 lease had it been current at the time. He agreed that possible explanations for the change of rateable occupier were that Mr Bartley was proposing to try and obtain a new long lease or that there had been a change in the financial positions of Mr and Mrs Bartley.

18. Mr Johnson submitted that the 1922 lease contained three of the classic indications of a surrender and regrant by the same tenant: 12 years remained on the 1838 lease when the new lease was granted; the address of the tenant, Mr Bartley, was shown on the 1922 lease as the property; and the 1922 lease was not expressed to be granted for a premium. The fact that there was no reference to a surrender was without significance - the position was the same with the 1961 and 1993 leases which were not disputed to have been regranted after a surrender.

19. Mr Johnson said that it was obvious that the document at Tab 17 of the supplementary bundle referred to the wrong property. There was no record of any 1868 or 1873 leases in the Middlesex Deeds Registry, as there should have been if, as was suggested, they were for terms in excess of 21 years. There was no relevant death in 1918 which could account for the grant of probate on 7 May 1918. There was no explanation for the listing of an assignment after the date of the grant of the 1922 lease. And there was no explanation for the reference to a marriage certificate, when Mr and Mrs Bartley had married in 1894 and died over 50 years later. There was no evidence to support the two hypotheses put to Mr Belcher in cross-examination, namely that the 1922 lease was granted reversionary upon the 1838 lease or that a deal was done with

an unidentified third party to surrender the 1838 lease and grant the 1922 lease to Mr Bartley. Such arrangements would have been bizarre, given the known occupation of the premises by Mr Bartley in 1922. However, even if the hypotheses advanced by Mr Munro were true, that would not be unhelpful to the tenant's case, since Mr Bartley might have held both the 1838 and 1922 leases after 1922, and an arrangement might have been made whereby the 1838 lease was vested in Mr Bartley by a third party at the point when the 1922 lease was granted.

**The landlord's case**

20. Mr Munro submitted that there was no evidence that Augustus Bartley held the 1838 lease when it came to an end. Mr Belcher's evidence was pure supposition, and in giving evidence as to the practice of the Middlesex Land Registry and in speculating as to the devolution of title, he went beyond his field of expertise. In fact, Mr Munro submitted, Mr Belcher was incorrect in his speculation. The effect of the Middlesex Deeds Act of 1708 was not to prevent an unregistered deed from having effect between vendor and purchaser, but only that subsequent purchasers were unprotected unless a memorial was entered. Moreover, Mr Belcher was also wrong to ignore the letter from the Land Registry which showed that, when the 1922 lease was lodged for registration, there were also lodged leases granted on 14 February 1868 and 30 January 1873, which must have been concurrent underleases for over 21 years and thus to have had term dates after the date of the 1922 lease. He submitted that far from the evidence suggesting that Bartley took an assignment of the 1838 lease and surrendered it, it was more likely that his wife, who was the rated occupier until 1920, was the tenant under a series of short leases until her husband was granted a lease in 1922, or that Mary Bartley occupied by virtue of the 1868 and/or 1873 underleases until her husband was granted the 1922 lease.

**Decision**

21. We have come to the conclusion that the tenant has not established, on the balance of probabilities, that Augustus Bartley ever held the 1838 lease. He may have done so, but the available evidence suggests otherwise. Even without the letter from the Land Registry dated 8 August 2002 we would not have been satisfied that the tenant's case was established. Had the 1838 lease been assigned to Bartley, we should have expected the landlord to have had some record of it. In our view the indications are that one or other of the Bartleys occupied under a series of underleases until 1922, when the new lease was granted to Bartley. We do not regard the change of rated occupier in 1920 from Mary Bartley to her husband as establishing that there had been an assignment of the lease at that time; other explanations are equally possible, as Mr Belcher conceded. We agree with Mr Johnson that the fact that the 1922 lease did not refer to the surrender of the 1838 lease is not significant and establishes neither the tenant's nor the landlord's case on this issue.

**2a. Has the tenant established that the 1957 lease was granted to Sally Trisk in her capacity as executrix and trustee of Alfred Kaiser's will?**

**The tenant's case**

22. Mr Belcher said that in surrendering the 1922 lease and obtaining a new lease Sally Trisk would have been acting as a prudent trustee, her aim being to sell the new lease and use the proceeds in order to fulfil the trusts of the will. The rating records showed that even after the grant of the new lease, the executors of Alfred Kaiser remained liable for the rates and Sally Trisk was merely the person to whom correspondence about the rates was to be sent. He considered to be speculation the suggestion put to him in cross-examination that the property

was in poor condition at the time of Kaiser's death and thus not a valuable asset. He agreed that there was no evidence that Sally Trisk took the new lease as executrix rather than in her personal capacity, or that the proceeds of sale of the new lease went into the estate or to the charity.

23. Mr Johnson submitted that there were several indications that Sally Trisk surrendered the 1922 lease and took the 1957 lease in her capacity as personal representative. In the first place, it was unlikely that she would have dealt with the same asset on the same day in two different capacities. Secondly, she had no right under the will to deal with the 1922 lease in her personal capacity. And thirdly, the rating records showed that in 1957/1958 the rates were paid by the executors of Alfred Kaiser. Sally Trisk lived elsewhere.

24. Mr Johnson said that the evidence did not suggest, as Mr Munro had put to Mr Belcher, that the property was a millstone. Sally Trisk had carried out no work to the property between acquiring and selling the lease six months later for the considerable sum of £8315, (the equivalent to approximately £250,000 today). She had surrendered the lease expressly as personal representative because the landlord required to be sure that she had not already assigned it. There was, however, no reason for the landlord to be concerned whether she took the 1957 lease in her own capacity, as trustee, or otherwise: all it needed to know was whether she would be good for the rents and the covenants. There was no evidence of any assent by Sally Trisk to herself, nor was there any need for her to her to be concerned about covenanting as beneficial owner that the lease was unencumbered when she had so recently taken the lease and therefore knew that it was not. The fact that she was described in the transfer to the developer as "beneficial owner" meant only that she was willing to give the covenants of a beneficial owner, which may have been what the purchaser required at the time.

**The landlord's case**

25. Mr Munro said that the indications were that Sally Trisk took the new lease in her personal capacity. The surrender was by her as executor; the new lease did not suggest that she took it other than as beneficial owner; references for the new lease were taken in her personal capacity; and the following year she sold it as beneficial owner. There was no evidence that she took the new lease in other than her personal capacity. One would have expected to find a correlation between her expressed capacity as surrenderor and her expressed capacity as lessee. The probable explanation was that, having proved the will, she got in the estate as executrix, and then disposed of the lease as executrix. As long as the value, if any, of the lease at the time of its surrender found its way into the trust, there would have been no breach of trust, but it was not accepted that the old lease, on which only 15 years remained and which was of a property in substantial disrepair, had value. If the property had then been in disrepair, as it appears to have been, and the lessee was thus in breach of the repairing covenant, that would have put Mrs Trisk in some difficulty, and it may well have been that she was advised that it was not in the interests of the estate to use any of its assets on the speculative enterprise of applying them to remedy the breaches of covenant.

26. Mr Munro said that if Sally Trisk had sold the lease as trustee, there was no reason why she should have given the covenants of a beneficial owner which were implied by virtue of section 76(1)(A) to (E) of the Law of Property Act 1925, rather than the more limited covenants appropriate to a trustee or executor which were implied by section 76(1)(F). There was no convincing reason why a trustee, properly advised, would be willing to give the covenants of a beneficial owner.

**Decision**

27. We are not satisfied that Sally Trisk took the 1957 lease as trustee or personal representative. She may have done so, but the documentary evidence suggests otherwise. We would have expected the 1957 lease to have described her as trustee or personal representative had that been the capacity in which she took it, and no convincing reason has been put forward for the description of Sally Trisk as "beneficial owner" in the subsequent transfer. It is notable, although, we accept, not decisive, that the references (at tab 9 of the main bundle) prepared for the landlord prior to the grant to her of the new lease make no mention of her capacity as trustee. On the contrary, the request to Mrs Trisk's solicitors, Messrs Herbert Oppenheimer, Nathan & Vandyk, from the landlord's solicitors, states that Mrs Trisk was "proposing to take a lease" of the property, and her solicitor's response was that she was "the Managing Director of a good sized company ... . She has a substantial income and we have no hesitation in recommending her as a respectable and responsible tenant of a residential property at a rent of £200 per annum." We accept Mr Munro's submission that the likelihood is that Mrs Trisk, who appears to have been a woman of financial substance, accounted to the trust for whatever the 1922 lease was worth, and thereafter dealt with the property as beneficial owner. The fact that the rateable occupier was recorded as the executors of Alfred Kaiser does not in our view assist, since no change of occupier was recorded until 3 April 1961, when Mrs Trisk had long ceased to have any connection with the property.

**2b. Does the capacity in which Sally Trisk surrendered the 1922 lease and took the 1957 lease matter?**

**The tenant's case**

28. Mr Johnson submitted that it did not matter to the tenant's case whether Sally Trisk took the new lease in her capacity as personal representative or in her personal capacity. He said that his

primary argument was that, in either event, section 3(3) operated, because there was identity of tenant, and section 3(3) required nothing more. Section 6(3), which, unlike section 3(3), specifically dealt with the rights of trustees under Part I of the Act, was determinative: had capacity mattered for the purpose of section 3(3), parliament would have said so.

**The landlord's case**

29. Mr Munro submitted that capacity was crucial for the purpose of section 3(3). The purpose of section 6 was to allow previous periods of occupation to qualify for the residence condition for enfranchisement, notwithstanding that they were as beneficiary. Had parliament intended that personal representatives or trustees could, at the end of a lease which they held, aggregate it with a lease granted to someone else, it would have said so. If the tenant's case was correct, it would make no difference who surrendered the old and who took the new lease.

**Decision**

30. In our view, it is necessary, to prove linkage under section 3(3), for the old and new leases to be held by the tenant in the same capacity. The identity of a trustee or personal representative is, in a sense, an irrelevance; and we would have expected specific reference to trustees to have been made in section 3(3) had it been intended that a long tenancy in the name of a trustee could be linked to a long tenancy by another for the purpose of the subsection.

**Improvements**

31. Since we have found that the tenant has not established a link, for the purpose of section 3(3), between the 1922 lease and the 1957 lease, it follows that no improvements carried out prior to the date of the 1957 lease fall to be disregarded as improvements carried out by the tenant or his predecessors in title under section 9(1A)(d) of the Act, and the answer to the question posed at paragraph 14(iii) of this Decision is, therefore, no.

32. By the1993 lease, the tenant's predecessors in title, Mr Horn and Ms Sinclair, covenanted with the landlord to carry out works as set out in the First Schedule "to convert the demised premises to a high class single private dwellinghouse with integral garage". They then, in about 1995, carried out works to reconvert the property from flats to a single house, and at the same time made a significant increase in the size of the house. Although Mr Johnson did not accept that it was rightly decided, or that the relevant part of the judgment of the Court is part of the ratio, or, indeed, that this tribunal is bound by Court decisions, he, correctly, accepted that this tribunal would consider itself bound to follow the Court of Appeal decision in *Rosen v The Trustees of the Camden Charities* [2001] 1EGLR 59, where it was held that works carried out by a tenant pursuant to a covenant with the landlord for which the tenant received equivalent value from the landlord are not works carried out by the tenant or his predecessors in title "at their own expense", within the meaning of section 9(1A)(d); and that this tribunal would also follow the decision of the Court of Appeal in *John Lyon's Charity v Shalson* [2002] 26 EG 141, where it was held that works to restore as a single house a property which had been previously converted into flats were not an improvement, because they merely reversed works which, at the valuation date, depressed the value of the property. He thus accepted, for the purpose only of the present decision, that the works to reconvert the property to a single dwellinghouse would not be disregarded by this tribunal. He said, however, that the tenant's predecessors in title had carried out additional works which they were not contractually bound to perform, and that these fell to be disregarded.

**The tenant's case**

33. Mr Johnson argued that these "voluntary elements", which, for the sake of simplicity, he restricted to the construction of a rear extension which increased the size of the property from 5756 square feet to 7267 square feet, some 1511 square feet, were carried out at the tenant's own expense, since his predecessors in title were under no obligation to increase the size of the house. He called Mr Buchanan to say that it would have been perfectly possible to create a "high class single private dwellinghouse", as the 1993 lease required, without increasing its size. Indeed, the average size of all the large, "high class" houses in Hamilton Terrace was, he said, around 6000 square feet, and the rooms would have been well proportioned without the increase in size.

34. Mr Johnson submitted that the original bargain required the tenants to do no more than reconvert the property to a high class single private house; it did not require them to enlarge it, and to do so was the tenants' choice. Consistent with the reasoning of Evans Lombe J in *Rosen*, it could not be right that the respondent should be denied the increase in value brought about by these voluntary works of enlargement.

**The landlord's case**

34. Mr Munro said that all the works carried out in 1995 were works of obligation. They were identified on drawings which were required by the 1993 lease to be approved by the landlord's surveyors; clause 2(1) of the lease required the lessee within three months to produce fully annotated working drawings for the approval of the landlord's surveyors, (such approval not to be unreasonably withheld or delayed); and clause 2(3) of the lease required the lessee within two years to carry out and complete the works in accordance with the approvals of the planning

authority and of the landlord's surveyors. He submitted that the facts of the present case on this issue were indistinguishable from those of *Cadogan Holdings Limited v Leslie (re 4 Cheyne Gardens SW3)* (LON/LVT/1332/00), where a leasehold valuation tribunal had decided that the tenants' consideration for the lease included all the works carried out by them and required by the lease. He called Mr Briant, who said that, though the drawings which had been sent to the landlord in accordance with clause 2(1) of the lease were not in fact fully annotated working drawings as the lease had required, they were considered sufficient for the purpose of the landlord's consent to the proposed works. He said that the works, which cost £1,242,521.82 excluding VAT, did not go beyond the high class nature of the project, and that the high class nature of the project required large reception rooms and a master bedroom suite, which could not be provided without extending the property. He agreed, however, in cross examination that it would have been perfectly possible to build a high class property within the original envelope.

**Decision**

35. We have come to the conclusion that Mr Johnson's argument on this issue is to be preferred. In our view the tenants' obligation under the lease was to produce a high class single private dwellinghouse with integral garage. The drawings were to come later. If the parties to the lease had been asked at the time whether the tenants were obliged to extend the property as part of the consideration for the lease, we consider that they would have agreed that they were not so obliged. The drawings, we are satisfied, set a limit on what the tenants might do, but did not impose an obligation to extend the property by about 20 per cent as they did, or at all.

**Determination**

36. We accordingly determine that the price to be paid for the freehold is £575,000, as is agreed between the parties to be the appropriate premium based on the findings we have made.

**CHAIRMAN**.....

**DATE**.....19 NOV 2002.....