UPPER TRIBUNAL (LANDS CHAMBER)

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Case No: LP/16/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANT – JURISDICTION – leasehold covenants – registered lease - whether deed of variation caused a surrender and re-grant – less than 25 years since variation – s.84(12), Law of Property Act 1925 – s.58, Land Registration Act 2002 – covenant "to use and occupy … solely and exclusively as a self-contained residential flat" – whether restrictive

IN THE MATTER OF AN APPLICATION UNDER SECTION 84 OF THE LAW OF PROPERTY ACT 1925

BETWEEN:

(1) JONATHAN PAUL STEVENS **Applicants**
(2) AUDREY STEVENS
- and -

ALEX IBRAHIM ISMAIL

Objector

Re: 29 Buckland Crescent, London NW3 5DJ

- -

18 January 2016

Martin Rodger QC, Deputy President

Royal Courts of Justice, London WC2A 2LL

Robin Green, for the Applicants
Timothy Polli, instructed by Housing and Property Law Partnership, solicitors, for the Objector

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The following cases are referred to in this Decision:

Friends Provident Life Office v British Railways Board [1996] 1 All ER 336

Kensington Pension Developments Ltd v Royal Garden Hotel (Oddenino's) Ltd [1990] 2 EGLR 117

Pennock v Hodgson [2010] EWCA Civ 873

City of Westminster v *Duke of Westminster* (1990) 23 HLR 174; (1992) 24 HLR 572

Shepherd Homes v Sandham (No.2) [1971] 1WLR 1062

Introduction

1. The grant of a lease creates a legal estate in a specific parcel of land for a defined term. Neither the land comprised in the lease nor the length of the term may be increased without a surrender of the original lease and the grant of a new lease. If the parties to a lease attempt such a variation their agreement will be treated in law as a surrender and re-grant, irrespective of their intention. In such a case the extended term is a new term taking effect from the date of the surrender and re-grant.

2. Some statutes concerned with leases take account of these rules of law and mitigate their effect for certain purposes by turning a blind eye to the surrender and re-grant and treating the original term as a continuous one. Examples of Parliament's awareness of the consequences of a surrender and re-grant can be found in section 150 of the Law of Property Act 1925, in para 6 of Schedule 2 to the Agricultural Holdings Act 1986, and in section 4(1)(f) of the Agricultural Tenancies Act 1995.

3. Section 84(1) Law of Property Act 1925 gives the Tribunal jurisdiction to discharge or modify restrictions on the use of freehold land arising under covenant. Section 84(12) extends that jurisdiction to covenants affecting leasehold land, but only where the term created by the lease was for more than 40 years and 25 years of that term have expired. Section 84 contains no saving provision to preserve that jurisdiction where a term of more than 40 years is surrendered by operation of law as a consequence of a variation intended only to add land or extend the term.

4. In this application Mr and Mrs Stevens seek the modification of covenants in two leases of flats at 29 Buckland Crescent, London NW3 to enable them to be combined to create a single larger flat. The objector, Mr Ismail, contends that the Tribunal has no jurisdiction to entertain the application because less than 25 years previously a Deed of Variation of one of the leases had the effect of surrendering that lease and bringing into existence a new lease for a term which does not yet satisfy the conditions in section 84(12). The objector also contends that one of the covenants which the applicants seek to modify is a positive covenant, rather than a covenant restrictive of the use of the premises, and that the Tribunal lacks jurisdiction to modify it on that account.

5. The Tribunal directed the hearing of preliminary issues to determine whether these objections to its jurisdiction are well founded. At the hearing of the preliminary issues the applicants were represented by Mr Robin Green and the objector by Mr Timothy Polli, both of counsel. I am grateful to them for their submissions.

The facts

6. 29 Buckland Crescent ("the Building") is a four-storey, semi-detached residential property the freehold of which is owned by 29 Buckland Crescent Management Company Ltd ("the Company").

7. The Building is divided into four flats. The flats with which this application is concerned are the garden floor flat and the hall floor flat immediately above it.

8. On 5 April 1980 each of the four flats was let by the Company for a term of 999 years from 24 March 1979. Mr and Mrs Stevens are the current registered proprietors of the lease of the garden floor flat which has been registered under the same title since 1980. Mr Stevens alone is the registered proprietor of the hall floor flat. Mr Ismail, the objector, is the registered proprietor of the first floor flat.

9. The third entry in the property register for the garden floor flat gives short particulars of the lease granted on 5 April 1980. The fifth entry records that by a Deed dated 26 August 1998 the terms of the registered lease were varied. The original Deed is noted as being filed with the Land Registry.

10. The lease of the garden floor flat demised the premises described in the First Schedule together with rights set out in the Second Schedule. The First Schedule described the demise as follows:

> "ALL THOSE the several rooms and premises known as Garden Floor Flat of that part of the Building in the position and for the purposes of identification only edged red on the plan hereto annexed …"

11. The rights granted by the Second Schedule included the exclusive use of the garden at the rear of the Building, the right in common with the lessor and others to obtain access to the flat over a pathway and staircase shown edged in blue on the plan and a further right in common with the occupiers of other flats over a forecourt towards the front of the Building shown edged in yellow on the plan to reach their dustbins. The plan attached to the lease showed the area of the garden floor flat edged in red and the areas coloured blue and yellow over which those rights had been granted.

12. The lease contains a covenant at clause 3(15) expressed to be for the benefit of the lessor and the lessees of the remainder of the flats in the Building by which the lessee of the garden floor flat covenanted with each of them:

> "Not knowingly to permit any new window light opening doorway path passage or drain or other encroachment or easement to be made or acquired into against or upon the demised premises…"

13. The lease of the hall floor flat was also granted on 5 April 1980 for a term of 999 years from 24 March 1979. It contains the same restriction on permitting easements to be acquired as in clause 3(15) of the lease of the garden floor flat. It also contains an additional covenant at clause 3(20) "to use and occupy the demised premises solely and exclusively as a self-contained residential flat." Both covenants are made by the lessee with the lessor and the lessees of the remainder of the flats in the Building, who include Mr Ismail.

14. Mr and Mrs Stevens wish to connect the garden floor flat and the hall floor flat internally, to allow them to be used together as a single dwelling. On 28 August 2014 planning permission was granted for the change of use of the two flats to use as a single maisonette and for associated works. It is common ground that the modification of the covenants at clauses 3(15) and 3(20) is necessary to enable the proposed development to be carried out. It will also be necessary for the applicants to

obtain further rights from the Company because the demise of the two flats does not include the area currently occupied by the floor joists which separate them and through which it is intended to create a new staircase.

15. On 26 August 1998 the Company entered into a Deed of Variation of the garden flat lease, the effect of which is critical to this application. The parties to the Deed of Variation were the Company, in its capacity as landlord and freeholder, and the lessees at that time, Mr Herbert and Mr Henry.

16. Before referring to the terms of the Deed of Variation in further detail I should record that it is common ground between the parties to this application that between the grant of the lease in 1980 and the Deed of Variation in 1998 certain modifications had been made to the garden flat which had the effect of extending it to the rear and to the side. At the side the flat was extended into the area edged in blue on the lease plan, over which the lessee enjoyed only a right of way in common with the lessor and others. At the rear the flat was extended into the garden by the creation of a kitchen and a conservatory. The effect of these modifications can be seen clearly by comparing the plan attached to the Deed of Variation with the plan attached to the original lease. No document is available showing precisely when these alterations were carried out, or consenting to them on behalf of the Company, but the modifications appear to have been completed in stages, the most recent of which probably occurred after December 1997 when an application for planning permission to extend an existing conservatory was recommended for approval by the local planning officer.

17. The Deed of Variation begins by reciting that it is supplemental to the 1980 lease, referred to as "the Registered Lease", details of which were given. The title of the Company and of the lessee are then recited before the Deed continues as far as is material with a further recital and operative parts as follows:

> "(4) The parties hereto have agreed to vary the Registered Lease in the manner hereinafter appearing
>
> NOW THIS DEED WITNESSTH as follows:
>
> 1. The Landlord and Tenant agree that the Registered Lease is varied as follows –
>
> 1.1 the plan attached to this Deed shall be substituted for the plan attached to the Registered Lease
>
> 1.2 that there be added to the Second Schedule of the Registered Lease a new paragraph 6 which will read "The exclusive right and liberty for the Lessee and all persons authorised by him to park one private motor vehicle only on the area shown edged blue on the said Plan and denoted with the word "Parking" together with a right to vehicular access thereto from Buckland Crescent"
>
> ….
>
> 3. SAVE as hereby varied the covenants and conditions contained in the Registered Lease shall continue in full force and effect in all respects

4. IT IS HEREBY CERTIFIED that there is no Agreement for Lease to which this Deed gives effect"

The parties also agreed that "in order to give effect to the variation contained in this Deed" a memorandum would be endorsed on the counterpart lease and they would lodge their respective land certificates at the Land Registry to enable the Registrar to make the necessary entries on the register of their titles.

18. Attached to the Deed of Variation was the plan referred to in clause 1.1 which was intended to be substituted for the plan originally attached to the 1980 lease. That plan was not a copy of the original plan but was newly drawn with different details. It shows an area at the front of the Building over which the lessee is now entitled to park signified by the word "parking". The new plan continues to show the garden floor flat edged in red, but that red edging now encloses the additional areas into which the flat had been extended by the creation of the kitchen and the conservatory between 1980 and 1998, as well as the remainder of the flat. The plan also shows the extension in section, but there is nothing on the plan itself to indicate that these parts of the building are of more recent construction than the remainder.

19. On 6 August 2015 the applicants applied to the Tribunal under section 84(1) of the 1925 Act to modify clause 3(15) of the leases of the garden floor flat and the hall floor flat and clause 3(20) of the hall floor flat to permit the carrying out of works to the demised premises in accordance with the planning permission which they had obtained, and to permit the use of the hall floor flat and the garden floor flat together as a single dwelling. By a notice of objection filed on 6 October 2015 Mr Ismail asserted that the Tribunal has no jurisdiction in respect of the garden floor flat at all, and that it has no jurisdiction to vary or modify the covenant at clause 3(20) of the lease of the hall floor flat.

Issue 1: the effect of the Deed of Variation

20. The parties agree that the variation of an existing lease to add additional land to the demise will operate as a surrender of the old lease and a grant of a new lease from the date of the variation. The principle is stated in *Woodfall: Landlord and Tenant* at paragraph 17.026, as follows:

> "Whether a purported variation of a lease takes effect as a surrender and re-grant depends on the nature of the variation. If the variation cannot be effected without the grant of a new lease, then it will take effect as a surrender and re-grant. The clearest example of the working of this principle is where the extent of the demise or the length of term is increased. However, in the absence of an increase in the premises demised or the length of the term, either of which will change the legal estate and work surrendered and re-grant, there will usually be no surrender."

21. The parties also agree that the law will give effect to a clear intention not to grant a new lease but to continue an existing lease on varied terms, unless the only way in which the arrangement can be implemented is by implying a surrender of the old lease and the creation of a new one. In *Friends Provident Life Office v British Railways Board* [1996] 1 All ER 336 the Court of Appeal held that a deed which substantially varied the terms of a lease so as to increase the rent and alter the covenants

concerning use and alienation did not have the effect of a surrender and re-grant. As Sir Christopher Slade explained at 350d:

> "… the authorities establish that where a landlord and tenant enter into an agreement which varies the terms of the subsisting tenancy but shows a clear intention not to create a new tenancy, the court will give effect to such intention, unless the only way by which the law can give effect to the arrangements made between the parties is to imply the surrender of the old tenancy and the creation of a new one."

He doubted whether "this exceptional situation" could ever arise except where the parties wished either a single term for an extended period to come into being, or further land to be added to an existing holding.

22. It is common ground that if the effect of the Deed of Variation was simply to add a right to park on the land at the front of the Building over which the lessee had previously enjoyed only a right of way on foot, that would not be sufficient to terminate the term created by the 1980 Lease and cause there to come into existence a new term by the legal fiction of a surrender and re-grant. It is the objector's case, however, that the Deed of Variation did not have that limited effect.

23. For the objector, Mr Polli argued that the plan substituted by the 1998 Deed of Variation clearly showed the demise to have been enlarged. Before 1998 the physical boundaries of the flat had been extended into the garden and into the passage at the side of the Building, but nothing had been done to incorporate the extension into the demise itself. Initially at least the lessee's rights over the extensions were precarious, as they were not based on an extension of the legal estate to include the additional land but rather were dependent on the imprecise doctrine of encroachment. Where lessees encroach onto land which is not demised to them they are nevertheless bound to treat it as part of the demised premises and to observe in relation to it all the covenants and obligations which affect the demised premises, although technically it does not thereby become part of the demised premises (see *Kensington Pension Developments Ltd v Royal Garden Hotel (Oddenino's) Limited* [1990] 2 EGLR 117, at 119D-E). By something akin to a proprietary estoppel the encroachment is presumed to be an addition to the demise and must be given up by the lessee at the expiry of the term, but there has in fact been no demise.

24. All that changed, Mr Polli submitted, when the 1998 plan was substituted for the original lease plan. At that point the demise itself was extended to include the kitchen and conservatory. As this could only be done by a surrender and re-grant, the effect of the substitution of the plan was to create a new term which commenced on 26 August 1998 and of which fewer than 25 years had expired when the application was made to the Tribunal.

25. On behalf of the applicants Mr Green submitted that the Deed of Variation had not increased the area of land demised by the lease at all. The plan originally annexed to the lease showed the garden floor flat outlined in red as it had existed in 1980 and the substituted plan following the Deed of Variation showed the flat presumably as it existed on 26 August 1998. The Deed of Variation did not, however, purport to alter the demise, nor was there any compelling reason to treat it as though it had enlarged the demise. The sole purpose of the Deed of Variation had been to confer the right to

park in a specified area and the purpose of the substituted plan was to identify where that area was. The use of an up-to-date plan showing the garden flat as it existed at the date of the Deed of Variation did not signify an intention to vary the extent of the flat itself.

26. Mr Green submitted that it was clearly not the purpose of the plan to define the extent of the demised premises. The plan was expressly said to be "for the purposes of identification only" and it was uncontroversial that that formula indicated that the plan was not intended to define exact boundaries or to control the verbal description of the parcels in the First Schedule to the lease. Support for those propositions, if it was required, could be found in the decision of Mummery LJ in *Pennock v Hodgson* [2010] EWCA Civ 873 at [9], and in Halsbury's Laws of England, vol 4 (2011), at para 305. As the plan originally annexed to the lease had not been intended to fix the exact boundaries of the demise, it followed that the substitution of the plan attached to the Deed of Variation could not have fixed, let alone altered, the boundaries of the demise either.

27. Mr Green also suggested that if the parties had intended to vary the area of the demise they would have done so in express terms and would have used very different language. It would have been necessary for them to vary the verbal description of the garden floor flat in the First Schedule to the lease. The original description referred only to "the several rooms and premises known as Garden Floor Flat" as they had existed in 1980 and that description was not updated or modified by the addition of a different plan. The verbal description continued to speak, unamended, from 1980.

28. As a further and independent answer to the objector's case Mr Green relied on the register of title for the garden floor flat. This showed that the Land Registry had not considered that the Deed of Variation had brought about a surrender of the original lease and a re-grant with effect from the date of the Deed. At a more technical level he pointed out that the only registered lease was the 1980 lease, and suggested that its presence on the register was conclusive of the fact that the applicant's legal interest was under that lease. By section 69(1), Land Registration Act 1925 (which had been in force at the date of the Deed of Variation) the registered proprietor of land registered as leasehold is deemed to have vested in him without any conveyance, the legal term created by the registered lease. The effect of section 58 of the Land Registration Act 2002 is the same: the legal estate is deemed to be vested in the person shown in the register as the proprietor of that estate as a result of the registration. Mr Green contended that the continuing presence of the 1980 lease in the property register was conclusive that the 1980 lease continued in existence.

29. I agree with Mr Green's primary submission that the Deed of Variation, objectively construed, indicates no intention of the parties to effect any change in the boundaries of the premises demised by the 1980 lease. The document gives every impression of having been competently drafted and contains no hint of an intention other than to grant an additional right to park on the land marked "parking" on the new plan. The parties had a single purpose, which both sub-clauses of clause 1 were designed to achieve. That purpose, and the absence of any overt intention to surrender the original lease and grant a new term with an enlarged demise, are apparent from the language which the parties used. They stated specifically that the Deed was supplemental to the Registered Lease, which it was their intention to vary. They recorded specifically that the covenants and conditions in the Registered Lease were to continue in full force and effect "in all respects", which I take to include in respect of the identification of the land to which those covenants and conditions applied. Clause 3

of the Deed refers to the making of appropriate entries in the register of title to give effect "to the variation contained in this Deed". The use of the singular, variation, rather than the plural, variations, supports the view that the operative parts of the Deed in clause 1 are both directed towards the achievement of the same variation in the parties' rights, namely the grant of the right to park on the land shown edged blue on the plan.

30. The substitution of the new plan was therefore intended to do no more than to indicate the position of the land over which the new exclusive right to park was to be exercisable. It is not suggested that a grant of an additional exclusive right to park was incapable of achievement without a surrender and re-grant. It is not necessary to treat the Deed of Variation as having had that effect unless the substitution of the plan showing the premises as they existed in 1998 was sufficient in itself to operate as a demise of those parts which had not been included in the 1980 lease. In my judgment it was not. The Deed contained no words of demise, and the new plan was not intended to show the boundaries of the demise any more than had the original plan. I have no doubt that the parties to the 1998 Deed proceeded on the assumption that the existing extensions were already part of the premises comprised in the lease. The technicalities surrounding the doctrine of accretion would have been beyond their contemplation and, as there is nothing in the Deed to suggest otherwise, they must be understood to have assumed that the lease already included the additions since the original grant. An element of informality is understandable given that the Company has at all times been owned by the lessees of the four flats in the Building. Had they not made that assumption the parties would surely have made it clear in the Deed that not only were they substituting a plan but they were extending the area of the demise. That was not their intention or understanding of the effect of the Deed and for that reason it was drafted in the way it was.

31. Given the limited purpose of the Deed of Variation I also agree with Mr Green that, following the execution of the Deed, the demised premises were still the garden floor flat as it had existed in 1980. Those were the premises described in the original lease and their location (but not their boundaries) were still shown edged in red on the substitute plan.

32. As the Deed of Variation was capable of achieving its limited purpose without resort to the legal fiction of a surrender and re-grant, I am satisfied that it did not have that unintended effect. For that reason the eighteen years of the term which had elapsed by the time the Deed was executed need not be discounted when considering whether a sufficient period has elapsed for section 84(12) to confer jurisdiction on the Tribunal to vary the restrictive covenants. I am satisfied that more than 25 years of the term had elapsed and that the Tribunal does have jurisdiction in relation to the covenants in the lease of the garden floor flat.

33. As for Mr Green's alternative argument that the continued presence of the 1980 Lease on the property register is conclusive that the applicants' interest is a term which commenced in 1980 and not in 1998, I would not have been prepared to accept that as a sufficient answer to the objector's challenge to the Tribunal's jurisdiction. Section 69(1) of the 1925 Act makes the register conclusive of the title of the registered proprietor in the registered estate, but it does not limit the description of that estate. The property register for No. 68 not only records the existence of the 1980 lease, but also the fact that it had been varied by the 1998 Deed. The registered interest is the original lease as varied. If, by operation of law, the variation had brought about a surrender and re-grant, I would

have been prepared to read the entries in the Register in the light of that legal fiction and to conclude that the 1980 lease, as varied to create a new term commencing on 26 August 1998, was the registered interest. As it is, having concluded that the effect of the Deed of Variation was not a surrender and re-grant, there is no inconsistency between the register and the applicant's rights as I have found them to be.

Issue 2: the covenant "to use and occupy" the hall floor flat

34. The objector's second challenge to the jurisdiction of the Tribunal concerns clause 3(20) of the hall floor lease, by which the lessee covenanted "to use and occupy the demised premises solely and exclusively as a self-contained flat". No similar covenant was included in the lease of the garden floor flat, nor did it include a further covenant at clause 3(19) of the other leases which prohibited the display of any name plate, placard or announcement of any description. Mr Polli submitted that the covenant at clause 3(20) was not merely restrictive of the use which could be made of the hall floor flat but positively required that it be used and occupied as a self-contained flat. It is common ground that the Tribunal has no jurisdiction under section 84 of the 1925 Act to modify or discharge a positive covenant.

35. Mr Polli acknowledged that, ordinarily, a covenant to use premises in a particular way is treated as limiting the use which may be made of those premises, rather than as compelling their use in the specified manner. He submitted, nevertheless, that a covenant "to use and occupy" was materially different. A requirement to use and occupy was an unconventionally phrased covenant which should be given its natural, positive, meaning.

36. In support of his argument, Mr Polli referred to the decision of Harman J in *City of Westminster* v *Duke of Westminster* (1990) 23 HLR 174, which concerned a head lease of 604 residential flats on the Milbank Estate which had been constructed by the Duke and the City at their joint expense following a private Act of Parliament, and let by the Duke to the City on terms which included a covenant that the demised premises would be "kept and used only for the purposes of the Grosvenor Housing Scheme as dwellings for the working classes." The question arose whether the Lands Tribunal had jurisdiction to modify or discharge the covenant. Harman J found that it did not because the obligation undertaken by the covenant was a positive obligation, indicated by the word "used", which carried a connotation of a duty to use. He reached this conclusion after considering heads of agreement pre-dating entry into the lease and other material which had been put in evidence.

37. I do not find the Westminster case of assistance in considering the very different covenant with which this application is concerned. The covenant in the lease of the hall floor flat must be construed in its own context, which is very far from the context surrounding the lease of the Milbank Estate and its 604 dwellings. It is also relevant that, although not reversed on appeal (because the parties reached agreement on the use of the dwellings, as far as it was within their power to do so), the basis of Harman J's judgment was significantly undermined by the approach taken by the Court of Appeal to the construction of the statute under which the estate scheme had been conceived ((1992) 24 HLR 572).

38. Mr Polli also sought to derive some assistance from a decision of Megarry J in *Shepherd Homes v Sandham (No.2)* [1971] 1WLR 1062 which concerned a covenant by a purchaser "that he will at all times maintain keep as and use for an allotment garden and entrance drive" a certain part of the land conveyed to him. Once again the context and language of the covenant in question seem to me to be significantly different from the covenant with which I am concerned and I do not find it of assistance.

39. Mr Polli submitted that leaving the hall floor flat vacant would plainly be a breach of the covenant because it positively required that the premises be occupied in a particular way. I disagree. The obligation is not simply to use and occupy the demised premises as a self-contained residential flat, but is to use and occupy it "solely and exclusively" for that purpose. That form of words indicates an intention that, if the demised premises are to be used and occupied at all, then it must be as a self-contained flat; if the owner chooses not to use and occupy the premises then he is free to leave them vacant. In my judgment the covenant in this case has the same character as the conventional covenant not to use premises other than for a specified purpose and the employment of the composite expression "to use and occupy" does not convert that conventional emphatic negative into a positive obligation.

40. It would be most unusual, to say the least, to find a positive obligation in an otherwise unexceptional lease of a residential flat requiring that it be kept occupied and used for the purpose for which it was designed. Mr Green pointed out some of the difficulties which would arise in knowing what was required of the tenant and what continuity and degree of occupation would be necessary to fulfil the obligation to use and occupy the premises as a self-contained residential flat. I agree that the position would be uncertain. Moreover, such a covenant is so unusual and potentially onerous that one would expect very much more emphatic and unambiguous language to have been adopted by parties intending to impose it.

Disposal

41. I am therefore satisfied that the Tribunal has jurisdiction to modify both clause 3(15) of the lease of the garden floor flat and clause 3(20) of the lease of the hall floor flat and I determine the preliminary issues in the applicant's favour. Whether the Tribunal should make the requested modification remains to be considered.

42. I have received submissions from the parties on the further conduct of this application in which the objector indicates that it no longer wishes to contest the substantive merit of the application but does seek permission to appeal to the Court of Appeal. I decline to grant permission to appeal as there seems to me to be no real prospect of the Court of Appeal reaching a different conclusion on either issue. I see sense in awaiting the outcome of any further application for permission which the objector may make to the Court of Appeal before any decision is taken on the substance of the application so I will give no further directions at this stage. I suggest the applicants inform the Tribunal when it becomes clearer whether or not there is to be an appeal.

43. The remaining issue concerns the costs of the preliminary issues. The applicants ask for their costs but, for the objector, Mr Polli relies on paragraph 12.5 of the Tribunal's Practice Direction in support of his submission that the appropriate order is that there should be no order for costs. The Tribunal's usual practice in applications under section 84 of the 1925 Act is that, on a substantive hearing, an unsuccessful objector will not normally be expected to pay the successful applicant's costs, unless the objector has acted unreasonably; the applicant is seen as seeking to diminish the objector's property rights (assuming the objector has the benefit of the restriction) rather than as asserting any right of their own.

44. I regard this case as falling outside the scope of the situations described in the Practice Direction. The objector challenged the Tribunal's jurisdiction, and disputed the applicants' statutory right to invoke the Tribunal's assistance. That was a challenge to the applicants' legal rights, rather than simply a defence of the objector's own right. I see no reason why, in those circumstances, the general rule should not apply so that the unsuccessful party should pay the successful party's costs. I therefore order the objector to pay the applicants' costs of the preliminary issues which I will summarily assess at £6,175 plus VAT of £1,235, totalling £7,410.

Martin Rodger QC,

Deputy President

3 February 2016