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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2011

LEASEHOLD ENFRANCHISEMENT – House – basis of valuation – alterations - appropriate day – change of identity - Leasehold Reform Act 1967, sections 1, 9 (1), 9 (1A) – Rent Act 1977, section 25

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER) (RESIDENTIAL PROPERTY)

Between:

Paul Geoffrey Clifton

Appellant

and

Liverpool City Council

Respondent

Re: West Farm,
261 Greenhill Road,
Allerton,
Liverpool L18 9SU

Before: His Honour Judge Hodge QC

Sitting at Liverpool Civil & Family Court Centre, 35 Vernon Street, Liverpool L2 2BX

On Tuesday 14 February 2017

Mr Andrew Orme of Orme Associates, Property Advisers, for the Appellant
Mr Nicholas Jackson, instructed by Hill Dickinson, for the Respondent

The following cases are referred to in this Decision:

Capital & Provincial Property Trust v Rice [1952] AC 142
Dixon v Allgood [1987] 1 WLR 1689
Griffiths v Birmingham City District Council [1987] CLYB 2172
Langford Property Co Ltd v Batten [1951] AC 223
Neville v Cowdray Trust Ltd [2006] EWCA Civ 709, [2006] 1 WLR 2097
Pepper v Hart [1993] AC 593
Railtrack plc v Guinness Limited [2003] EWCA Civ 188, [2003] 1 EGLR 124

DECISION

Introduction

1. On 13 July 2016 the First-tier Tribunal (Judge C Goodall and N R Thompson FRICS) issued a Preliminary Decision as a final determination of the preliminary issue of whether the valuation of the price payable for the freehold of West Farm, 261 Greenhill Road, Liverpool L18 9SU under section 21 (1) (a) of the Leasehold Reform Act 1967 should be prepared under section 9 (1) or section 9 (1A) of the 1967 Act. For the reasons set out at paragraphs 28 to 34 of its decision, the Tribunal determined that the correct statutory basis for valuation of the price payable by the Appellant to acquire the freehold of the property was under section 9 (1A) of the 1967 Act.

2. On 29 September 2016 the Deputy President (Martin Rodger QC) granted permission to appeal and directed that the appeal should be dealt with as a review of the decision of the First-tier Tribunal, to be conducted under this Tribunal's standard procedure. In giving permission to appeal the Deputy President observed that there was "remarkably little authority on the proper application of the complex statutory provisions to determine the 'appropriate day' for the purposes of the 1967 Act". It was said to be "arguable that the property in issue in this appeal did not exist on 23 March 1965 and that, contrary to the tribunal's conclusion, it did not consist on that day of more than one hereditament having a rateable value in the valuation list then in force".

3. This Tribunal has received written and oral submissions from Mr Andrew Orme for the appellant and Mr Nicholas Jackson (of counsel) for the respondent. This Tribunal was also addressed briefly by the appellant himself although his observations did not relate to the actual subject-matter of this appeal. Both parties agreed with this Tribunal's assessment that, having regard to the nature and subject-matter of this appeal, a view of the property and its setting would serve no useful purpose.

The First-tier tribunal's decision

4. The First-tier Tribunal set out the background to the application at paragraphs 1 to 7 of its decision. The appellant's lease was dated 30 January 1985 and the term was 99 years computed from that date. The yearly rent was the nominal rent of one red rose. The valuation date was 24 July 2014 at which point the unexpired term of the lease was 69.5 years. The Tribunal explained why it had decided that it should determine the correct basis of valuation as a preliminary decision, leaving the determination of the final price to be paid for the freehold to a future hearing. The Tribunal proceeded to set out its findings as to the state of the property, based upon its inspection and the written evidence, at paragraph 8 of its decision. In particular, the Tribunal found that at the time of the grant of the lease on 30 January 1985 the property had comprised two residential units, consisting of a ground floor flat and a two floor maisonette. Between 30 January and 1 October 1985 these two existing

units had been converted into a single house, and a swimming pool had been installed. Later works had been carried out to extend the property on both sides in 1991, in 2005, in 2009, in 2010/11 and in 2012/13 but, in the event, nothing turns on these further works because there is no evidence of any change to the rateable value of the property subsequent to, or consequential upon, these further alterations.

5. The Tribunal proceeded to set out the relevant statutory provisions at paragraphs 9 to 21 of its decision. It referred to sections 1 (1), 1A, and 9 (1C) of the 1967 Act and noted (at paragraph 14) that where the house and premises have a rateable value above £200 on the appropriate day, the right to enfranchise is dependent upon section 1A, which means that the price is to be ascertained under section 9 (1A). The Tribunal then referred to sections 9 (1A), 1 (4), 37 (6) and 1 (5) of the 1967 Act and to section 25 (1) and (3) of the Rent Act 1977. At paragraph 21 of its decision the Tribunal summarised what it described as "these complex provisions": "to obtain the benefit of a valuation under section 9 (1), the following must apply: (a) if the appropriate day was before 1 April 1973, the rateable value of the property on 23 March 1965, or on the first day it appeared on the rating list, if later, must not have been more than £200; or (b) if the appropriate day was on or after 1 April 1973, the rateable value on the first day the property appeared on the rating list must not have been more than £500; and (c) if the property had a rateable value on 31 March 1990, the rateable value must have been below £500. It was accepted by the parties to this appeal that this summary represents an accurate statement of the law.

6. At paragraph 22 of its decision the Tribunal quoted the following statement from paragraph 3-23 of *Hague: Leasehold Enfranchisement*, 6th edn (2014), headed "The appropriate day":

> "This expression is defined to mean '… the 23rd March 1965 or such later day as by virtue of s.25(3) of the Rent Act 1977 would be the appropriate day for the purposes of that Act in relation to a dwelling-house consisting of the house in question if the reference in para (a) of that provision to a rateable value were to a rateable value other than nil'. The appropriate day is March 23 1965 unless the house in question fails to fulfil one of the following three conditions:
>
> (1) it is a hereditament for which a rateable value other than nil was shown in the rating valuation list in force on that date; or
>
> (2) it forms part of such a hereditament; or
>
> (3) it consists of or forms part of two or more such hereditaments.
>
> Thus, in relation to most houses built before March 23 1965, that date will be the appropriate date. In other cases, the appropriate date is the first day thereafter on which the house does fulfil one of the above three conditions.
>
> Problems can arise in ascertaining 'the appropriate day' where a property is altered and/or its use changed, and a consequential alteration is made in the valuation list. An example is where a property used as flats, with separate

> entries in the valuation list on March 23 1965 for each flat, is converted into a house in single occupation and the valuation list is subsequently altered to include only a single entry for the house. There is remarkably little authority dealing directly with the question whether on March 23 1965 the house consisted of two or more hereditaments (making that date 'the appropriate day') or whether the house only appears in the valuation list at the later date (which is thus 'the appropriate day'). It has however been held [in *Griffiths v Birmingham City District Council* [1987] CLYB 2172, Judge Clive Taylor QC, Stafford County Court] that the principle to be applied is whether there has been a change in identity in the rateable hereditament. It is considered that there must be a substantial change between the premises in their former state and their subsequent state. Mere improvement is not sufficient. The question is one of fact and degree for the judge. In this case two derelict cottages had been converted to provide a single house of character with modern amenities—there had been a substantive change of identity and 'the appropriate day' was thus the first day on which the modified house first appeared in the valuation list.
>
> It can be necessary to ascertain the rateable value of the house and premises on April 1 1973 or on March 31 1990. However, such a date is not 'the appropriate day' (unless it happens to be the date on which the house first appears in the valuation list) as is sometimes erroneously thought."

7. At paragraphs 23 to 26 of its decision the Tribunal referred to the decisions of the county court in *Griffiths v Birmingham City District Council* [1987] CLYB 2172, the Court of Appeal in *Neville v Cowdray Trust Ltd* [2006] EWCA Civ 709, [2006] 1 WLR 2097, and the House of Lords in *Dixon v Allgood* [1987] 1 WLR 1689.

8. The Tribunal set out the evidence on the rating lists available to it at paragraph 27 of its decision:

> (a) The 1962 Rate Book showed West Farm as two hereditaments, being a Flat (Ground Floor) with a rateable value of £114 and a maisonette (First and Second Floors) with a rateable value of £122, making £236 in total.
>
> (b) The 1973 Rate Book originally showed West Farm as comprising the same two hereditaments as in the 1962 Rate Book but with altered rateable values being respectively £254 and £270, making £524 in total.
>
> (c) However, the 1973 Rate Book was amended subsequently to show both entries relating to West Farm as crossed out in red and a marginal note (which was only partly visible) saying "D6". The appellant suggested that this marginal note reflected a change in identity of the property to a single dwelling house, and the entry being transferred to a "Directions Book". The Tribunal had no evidence before it of any entry in a "Directions Book". There was no evidence available which allowed the change of entry in the 1973 Rate Book to be dated. The Tribunal noted that virtually all of the hereditaments in the 1973 Rate Book had been deleted and transferred elsewhere.

(d) Domestic rates had been abolished in 1989. Rateable values were retained with records kept by some water authorities. The appellant had provided a Con 29DW (Drainage and Water Enquiry) search reply from United Utilities dated 11 November 2009 which stated that sewerage and water charges "were based on the rateable value of the property of £310". The Tribunal commented that the property concerned had not been identified on the one-page extract from the search (page 7 of 18) which had been produced to the Tribunal. That omission has now been rectified and the full document is now available from which it is clear that the property in question was West Farm, Greenhill Road, Allerton, Liverpool L18 9SU.

9. The Tribunal set out the reasoning which led it to conclude that section 9 (1A) was the correct statutory basis for valuing the price payable by the appellant to acquire the freehold of the property at paragraphs 28 to 34 of the decision. The application of the relevant statutory provisions was said to require the Tribunal to decide: (a) whether the house and premises had a rateable value at the commencement of the tenancy or else at any time before 1 April 1990 (as required by section 1 (1) (a) (i) of the 1967 Act); and, if so, (b) what was the "appropriate day" to determine whether the rateable value applying on that day meant that the valuation basis was section 9 (1) or section 9 (1A). In the Tribunal's view, the first question was determined by section 25 (1) of the 1977 Act. The facts showed that as at 23 March 1965 the property consisted of the two hereditaments then showing in the rating list as at that date. Under section 25 (1), the appropriate action where the property consisted of more than one hereditament was to aggregate the rateable values of the hereditament which constituted the property. Thus, as at 23 March 1965, the property had a rateable value of £236. The "appropriate day" was very simply identified by the application of section 1 (4) of the 1967 Act and section 25 (3) of the 1977 Act and was 23 March 1965. On that date, the dwelling-house consisted of more than one hereditament (namely the two hereditaments together) which had an aggregate value of more than £200. To use the language set out in the extract from *Hague* cited at paragraph 6 above, the "house in question … consists of two hereditaments … for which a rateable value other than nil was shown in the rating valuation list in force on 23 March 1965. As the rateable value was more than £200, section 1A of the 1967 Act applied and so the valuation was under section 9 (1A)."

10. This discussion was said not to require a detailed consideration of the evidence of the change in rateable values between 1965 and 1990 of the property. Had the Tribunal considered that evidence to be relevant, it would have required more detail in any event as the content of the Directions Book would have been important, as would establishing the final rateable value before 1990. The water search extract provided was said to be inadequate to establish any rateable value at all as it failed to identify the property with which it was concerned.

11. It was said that *Griffiths v Birmingham City Council* did not assist the appellant because it was an essential ingredient in that case that the improved property appeared in a valuation list in its improved state. There was said to be no evidence that this had ever occurred. The cases of *Neville v Cowdray Trust Ltd* and *Dixon v Allgood* did not help the appellant because both of them in fact supported the decision which the

Tribunal had reached even though they both considered slightly different statutory provisions.

The submissions

12. The appellant submits that the "appropriate day" for the purposes of the 1967 Act was not 23 March 1965 but was the date when a single rateable value of £310 was first entered for the entire property. This was after 1 April 1973 so that section 1 (1) of the 1967 Act applies and the valuation is therefore under section 9 (1) and not section 9 (1A). Relying on the reasoning in *Griffiths*, the appellant submits that there was a substantial change in the identity of the property after the grant of the lease on 31 January 1985 when it was converted from two separate dwellings into a single house. Section 25 (3) (b) of the 1977 Act operates so as to defer the "appropriate day" to the date when a new rateable value is first shown in the valuation list in a case where changes are made to a property which are more radical than mere improvements and constitute a change in the identity of the property which necessitate its revaluation for rating purposes. This is what happened when the property was converted from the existing two residential units into a single house between the end of January and the beginning of October 1985 (as described in Mr Orme's letter to the First-tier Tribunal and chronology of development dated 23 March 2016 at pages 267-9 of the hearing bundle). As previously stated, the appellant has now produced the full drainage and water search reply which shows that it indeed relates to the property. The appellant also relies upon two documents recently obtained from United Utilities as the relevant water undertaker. The first is a letter dated 26 January 2017 which confirms that the rateable value for the property is £310 and explains that United Utilities holds information on rateable values for individual properties but does not have access to or hold a copy of the original charging books created by the Valuation Office. The second is an email dated 8 February 2017 which confirms that "our records for this property begin on 30 January 1985 and the rateable value has always been 310". It was pointed out to Mr Orme that if the rateable value of the property on 31 January 1985 was indeed £310, then this new rateable value could not have been attributable to any of the improvements to the property effected after the grant of the lease, including the conversion of the two existing apartments into a single house. Mr Orme's response was that the Valuation Office may have operated a policy of back-dating any change in rateable value to the commencement of the relevant works. Mr Orme told me that he had made a freedom of information request for the relevant entry in the Directions Book from the Valuation Office but that this had not been forthcoming.

13. For the respondent, Mr Jackson acknowledges that the concept of an error of law is widely interpreted in appeal from tribunals and he takes no point on this Tribunal's jurisdiction to entertain this appeal. He invites this Tribunal to uphold the decision of the First-tier Tribunal for precisely the reasons that it gave. Mr Jackson submits that the appellant's case failed at first instance on the facts because: (1) the property had comprised two rateable hereditaments as at 23 March 1965 with an aggregate rateable value in excess of £200 (as established by the 1962 Rate Book); and (2) the appellant had failed to prove his assertion that the rateable value of the property (as actually recorded in the valuation list) was £310 at any relevant point

after 1 April 1973. There had therefore been no point in considering what impact his alleged improvements might have had on the character or identity of the rateable hereditament (which Mr Jackson identified as "the *Griffiths* point"). The First-tier Tribunal had not needed to consider whether the works undertaken between the end of January and October 1985 had resulted in the creation of a new and different entity, but they clearly had not. The key point in *Griffiths* had been that two previously uninhabitable cottages had been converted into one house of character with modern amenities. In his brief oral reply, Mr Orme sought to argue, by reference to the valuation report for mortgage purposes at pages 35-7 of the hearing bundle, that this property had been uninhabitable at the time of the grant of the lease. However, that report does no more than state that: "The property has been left vacant for some considerable period of time and as a result is in a poor state of repair"; and the works required to be undertaken are described as "items of improvement and repair".

14. Mr Jackson submits that there is no good reason why the appellant ought to be permitted to introduce the two recent letters from United Utilities in evidence upon the appeal. If new evidence were to be admitted, given the key significance of the valuation list, the respondent should be entitled to insist upon the facts being established by the primary evidence of the relevant Directions Sheet. Moreover, the letters were deficient in a number of respects, most notably because they shed no light upon whether the £310 figure was an aggregate or whether the two original rateable hereditaments had been replaced by a single hereditament. It was not known precisely what primary evidence was held by United Utilities: the email of 8 February was merely one employee's hearsay account of the assessment of unspecified records undertaken by another unknown employee. It was the appellant's case that the recorded rateable value of the property had been £310 since 30 January 1985, and so contemporaneously with the lease, and, more importantly, prior to the physical alterations relied upon. The inescapable corollary must be that the appellant could not show that the valuation list had been altered with reference to the new property comprising the rateable hereditament in its allegedly new and discrete form consequential upon the physical alterations. The work that had been undertaken post-dated 30 January 1985 and thus any re-rating exercise. There was no evidence to support Mr Orme's suggestion that the alleged re-rating of the converted property had been entered retrospectively and this was pure speculation. The wording of the email of 8 February, confirming that "our records for this property begin on 30 January 1985 and the Rateable Value has always been 310", is entirely to the contrary.

15. The *Neville* case was said to be authority for the proposition that section 25 (1) of the 1977 Act directs attention to the hereditament or hereditaments rather than the property or the house: see paragraph 33. *Griffiths* was said to be a case concerning the low rent test in section 4 of the 1967 Act. If it were to be transposed to section 25 of the 1977 Act then, in order to stand with *Neville*, the question was not whether a new, and wholly different, property or house had come about but whether the result was an entirely new and different rateable hereditament. In any event, as recognised by the First-tier Tribunal (at paragraph 33 of its decision), it was not enough simply to establish that a new entity had come about; it must also be shown that the valuation list had been altered with specific regard to that new entity. In order to displace the date of an earlier entry in the valuation list as the "appropriate day", it was necessary

to establish both (1) a substantial change in the identity of the hereditament and (2) that that new entity had been re-rated and included in the valuation list.

Discussion and conclusions

16. Under section 11 of the Tribunals, Courts and Enforcement Act 2007 an appeal from a decision of the First-tier Tribunal lies on a point of law. In appeals from tribunals, the concept of an error of law or a point of law has been widely interpreted. In *Railtrack plc v Guinness Limited* [2003] EWCA Civ 188, [2003] 1 EGLR 124 at paragraph 51 Carnwath LJ summarised the principles applicable to an appeal on a point of law from a specialist tribunal (in that case the Lands Tribunal) as follows:

> "This case is no more than illustration of the point that issues of 'law' in this context are not narrowly understood. The Court can correct 'all kinds of error of law, including errors which might otherwise be the subject of judicial review proceedings' (*R v IRC ex p Preston* [1985] 1 AC 835 at 862 per Lord Templeman; see also *De Smith, Woolf and Jowell, Judicial Review*, 5th edn, para 15-076). Thus, for example, a material breach of the rules of natural justice will be treated as an error of law. Furthermore, judicial review (and therefore an appeal on law) may in appropriate cases be available where the decision is reached 'upon an incorrect basis of fact', due to misunderstanding or ignorance (see *R (Alconbury Ltd) v Secretary of State* [2001] UKHL 23, [2003] 2 AC 295 at para 53, per Lord Slynn). A failure of reasoning may not in itself establish an error of law, but it may 'indicate that the tribunal had never properly considered the matter…and that the proper thought processes have not been gone through' (*Crake v Supplementary Benefits Commission* [1982] 1 All ER 498 at 508)."

In the *Railtrack* case the issue was whether the Lands Tribunal had misunderstood some complicated expert evidence, resulting in a double counting in the valuation. The Court of Appeal accepted that, in principle, that was a permissible ground of appeal where the right of appeal was limited to questions of law; but it held that the ground was not made out on the facts. Some errors of law will be easily identified, as where a statute or document which the tribunal is called upon to interpret has been misconstrued. As the decision of the Court of Appeal in *Railtrack* indicates, however, the concept of appeal on a point of law is widely understood, particularly in appeals against decisions of tribunals. It is not possible or desirable to provide any sort of exhaustive list, but the following examples illustrate the breadth of the concept:

> (1) A procedural irregularity or manifest unfairness which causes the decision of a tribunal to be unjust.
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> (2) A decision based on a finding of fact for which there is no supporting evidence.
>
> (3) A finding of fact which is so obviously wrong as to be perverse.
>
> (4) A failure to provide adequate reasons for a decision.

(5) A failure to resolve a conflict of evidence or opinion which is central to the fair resolution of the issues in a case.

(6) An over-reliance on the burden of proof as a means of avoiding the resolution of competing expert opinions.

(7) A mistake of fact giving rise to unfairness in the decision.

17. In my judgment the decision of the First-tier Tribunal contains no error of law. I would allow the appellant to adduce and to rely upon the full drainage and water search reply because this does no more than to put the existing extract into context and to supply an omission upon which the Tribunal commented at paragraph 32 of its decision and upon which it could have sought clarification at the hearing. I would also allow the appellant to rely upon United Utilities' letter of 26 January and its email of 8 February 2017. I acknowledge that, with reasonable diligence, these documents could have been obtained for use at the original hearing; but they merely clarify the date by which the rateable value of £310 (which was already in evidence) had been recorded for the property; and, on a proper analysis, they support the First-tier Tribunal's decision. I accept Mr Jackson's submissions that since the recorded rateable value of the property has been £310 since 30 January 1985, and so contemporaneously with the lease, and, more importantly, prior to the physical alterations which resulted in the conversion of the two former units of residential accommodation into a single house, the appellant cannot show that the valuation list has been altered with reference to the new property comprising the rateable hereditament in its allegedly new and discrete form consequential upon the physical alterations. The work that was undertaken post-dated 30 January 1985 and thus any re-rating exercise. There is simply no evidence to support Mr Orme's suggestion that the alleged re-rating of the converted property had been entered retrospectively; this is pure speculation. Indeed, the wording of the email of 8 February, confirming that "our records for this property begin on 30 January 1985 and the Rateable Value has always been 310", is entirely to the contrary. I also accept Mr Jackson's further submission that in order to displace the date of an earlier entry in the valuation list as the "appropriate day", it is necessary to establish both (1) a substantial change in the identity of the hereditament and (2) that that new entity has been re-rated and included in the valuation list. Since the £310 entry pre-dated the conversion of the property into a single house, that entry cannot relate to the new house so formed, with the result that there can have been no substantial change in the identity of the hereditament in the valuation list, and thus nothing to displace 23 March 1965 as the "appropriate day", at which time the property consisted of two hereditaments with an aggregate value of £235 (as pointed out at paragraphs 29 to 30 of the Tribunal's decision). In short, the property in issue in this appeal did exist on 23 March 1965 and, as the Tribunal rightly concluded, it then consisted of more than one hereditament having a rateable value in the valuation list then in force of more than £200.

18. That is strictly enough to dispose of this appeal; but, as the Deputy President observed, when giving permission to appeal, there is "remarkably little authority on the proper application of the complex statutory provisions to determine the 'appropriate day' for the purposes of the 1967 Act". Neither party before me sought to challenge the analysis at paragraph 3-23 of *Hague* cited at paragraph 6 above; and anything I say on this subject will be strictly obiter. But given the paucity of authority

in this area - and in the unlikely event that my decision is challenged on appeal - it is appropriate that I should deal briefly with the position on the counter-factual assumption that the appellant had demonstrated that the rateable value had been entered as £310 following, and consequential upon, the conversion of the property into a single house.

19. As *Hague* points out, the only authority that bears on this issue is *Griffiths v Birmingham City DC*. It is a decision of a judge (HH Judge Clive Taylor QC) sitting in the Stafford County Court and it is only noted in the Current Law Year Book, having apparently been related by the counsel in the case, Roger Cooke (now His Honour Roger Cooke) and Robert Ham (now Robert Ham QC). On an application by a tenant to purchase the freehold of his house, an issue arose as to whether his tenancy was one at a low rent, which required the rent to be below a certain proportion of the rateable value. That question depended on what was the "appropriate day" for the ascertainment of rateable value under section 4 of the 1967 Act (as then enacted). The house had been extensively modified and improved since 1965 so if the appropriate day was March 23 1965, or any later date prior to the value of the house in its improved state appearing in the valuation list, the rent would have been more than two-thirds of the rateable value. It was held that the correct principle to be applied was whether there had been a change of identity. There must be a substantial change between the premises in their former state and their subsequent state. Mere improvement was not sufficient. The question was one of fact and degree for the judge. On the facts, two uninhabitable cottages had been converted into one house of character, with modern amenities, and there had been a change of identity. Therefore the correct date for the purposes of the 1967 Act was the first date when there appeared in the valuation list a rateable value identifiable as relating to the property in its new state.

20. The only authorities apparently cited to the judge in *Griffiths* were the cases of *Langford Property Co Ltd v Batten* [1951] AC 223 and *Capital & Provincial Property Trust v Rice* [1952] AC 142 The question for the House of Lords in each of those cases was the amount of the standard rent for lettings of dwellinghouses within the meaning of the Rent Restriction Acts. In the course of their speeches, their Lordships considered the treatment of physical changes in the subject-matter of a tenancy of a dwellinghouse within the Acts brought about by the improvement or structural alteration of the premises. In *Batten's* case, Lord Porter said (at p 233): "Whether the new letting is to be regarded as the same entity as the old is a question for the county court judge. I would only add that there must be a substantial change between the premises formerly let and those subsequently the subject of a letting. A mere small or incidental change is not enough." At p 240 Lord Radcliffe said that the Acts "do not regard mere improvement or structural alteration as effecting a change of identity for the purposes of standard rent … Some change more radical than the mere fact of improvement or structural alteration must take place before it can be said that, in effect, the dwelling-house which will then be under consideration has not been previously let." In *Rice's* case, Lord Porter (at p 150) said that "there must have been substantial structural alteration before the dwelling can be said to have shed its identity and become a new entity". At p 163 Lord Reid (with whom Lord Asquith agreed) rejected the argument that "structural alterations of a trifling character" were sufficient where there had been a functional change in the use of accommodation; and

he emphasised the need for "structural changes … which alter substantially the character of the accommodation". It is clear that this reasoning informed the decision of the judge in *Griffiths*.

21. *Griffiths* was decided on 26 January 1987 and so pre-dates the decision of the House of Lords in *Dixon v Allgood* in which judgment was handed down on 26 November 1987, with the case being briefly reported in "The Times" on the following day and reported in full in the Weekly Reports on 11 December 1987. It follows that the trial judge in *Griffiths* would not have had the benefit of the decision of the House of Lords in *Dixon v Allgood* and, more particularly, the observations of Lord Templeman (who delivered the only reasoned judgment) at pages 1694 E – 1695 D. Lord Templeman said this:

> "By fixing 25 March 1965 as the appropriate day for houses rated before that day, the Act of 1967 indicated clearly that events taking place after 25 March 1965 resulting in an increase or decrease of rateable value were to be ignored. Changes in rateable value could take place as a result of a quinquennial or other general revaluation or as a consequence of changes taking place to a particular hereditament which included a house. The rateable value of such a hereditament might be reduced as a result of deterioration of the house or the neighbourhood. The rateable value of the hereditament could be increased by an extension or improvement to the house itself or by the erection of a building in the curtilage of the house. All these changes must be ignored. For example, if in the present case Riverside Cottages had been rated before 25 March 1965, the hereditament comprising Riverside Cottages would have included the courtyard. If after 25 March 1965 the tenant had erected five garages in the curtilage of Riverside Cottages, the rating authority might have increased the rateable value of Riverside Cottages or might have rated the five garages as a separate hereditament. Whether the garages were rated with the cottages or as a separate hereditament, the rateable value attributable to Riverside Cottages and the premises including the five garages for the purposes of the Act of 1967 would remain the rateable value as fixed on 25 March 1965. A tenant of a house rated on 25 March 1965 cannot improve his position under the Act of 1967 by building in the curtilage of the house garages or other buildings which become rated as a separate hereditament or lead to an increase in the rateable value of the house. Under the Act of 1967 the tenant is entitled to purchase both the house and the garages which are included in the curtilage as premises, provided that the rent payable for the house and premises is less than two-thirds of the rateable value of the house on 25 March 1965. Similarly in the present case the tenant could not improve his position under the Act of 1967 by building five garages in the curtilage of the cottages after the appropriate day. It is significant that section 25(4) of the Act of 1977 does permit an increase in rateable value after the appropriate day in limited circumstances. By section 25(4) such a variation is taken into account but only where the variation 'has effect from a date not later than the appropriate day'. In other words if a garage is built in the courtyard of a house before the appropriate day but is not rated until after the appropriate day or is not taken into account in the rateable value of the house until after the appropriate day, nevertheless effect can be given to the variation for the purposes of the Act of 1967 if the variation when it takes place 'has

effect from a date not later than the appropriate day'. But unless the conditions specified in section 25(4) are satisfied, events which take place after the appropriate day must be disregarded, and the appropriate day itself is by section 4(1) of the Act of 1967 judged by reference to the first day upon which the house as a single hereditament or as two or more hereditaments first appears in the valuation list."

Section 4 (1) of the 1967 Act (cited by Lord Templeman) corresponds to section 1 (4) of the same Act for the purposes of determining what is the "appropriate day" for the purposes of section 1 (1) (a) (i). Although the point was not directly in issue in *Dixon v Allgood,* Lord Templeman would not appear to have contemplated that a substantial change between premises in a former state and in their subsequent state would be enough to constitute a change in the identity of the rateable hereditament sufficient to displace an earlier "appropriate day". Mr Orme suggests that the decision of the Court of Appeal in *Dixon v Allgood* (which was handed down on 5 November 1986) would have been available to the court in *Griffiths*. The report of the case in the Rating & Valuation Reporter, at (1987) 27 R & VR 200 (which was the report placed before this Tribunal), apparently post-dates the date of the *Griffiths* decision; the brief report of that decision does not suggest that the Court of Appeal's decision had been cited to the county court judge; and there is nothing in the leading judgment of Slade LJ, or the short concurring judgment of Waite J, which could have assisted the court in *Griffiths*.

22. The actual decision in *Dixon v Allgood* is not directly relevant to the issue that arises where a property is altered and a consequential alteration is made in the valuation list. In *Dixon* two semi-detached cottages were first shown separately in the valuation list in 1966 at £42 and in 1967 at £34. A garage was later constructed on the forecourt of the cottages and was rated at £24. The two cottages were subsequently converted into and occupied as a single dwelling-house. The rent was less than two-thirds of the aggregate rateable values of the three hereditaments (£100) but more than two-thirds of the aggregate rateable value of the two cottages alone (£76). It was held by the House of Lords (affirming the Court of Appeal) that the tenant was not entitled to acquire the freehold under the 1967 Act because, by virtue of section 4 (1) (a) of the 1967 Act, the "appropriate day" was to be determined under section 25 (3) of the 1977 Act in relation to "the house in question" and this was the cottages excluding the garage.

23. The issue in *Neville v Cowdray Trust Ltd* was whether the expression "the property" in section 4A (2) of the 1967 Act was to be taken as referring to the property originally let under the tenancy (which was two self-contained cottages each with a separate rateable value of £21) or to the property once it had later been converted into a single dwelling (with a new rateable value of £158). The rent was more than two-thirds of the aggregate rateable value of £42 but was less than two-thirds of the new rateable value of £158. It was held that section 4A (2) directed attention to "the property" and not to "the house" or "the house and premises", and thus to the original two hereditaments for which aggregable rateable values had been shown in the valuation list at the commencement of the tenancy, and not to the single house into which they had later been converted. The fact that the eventual converted single dwelling-house did not then exist no more affected this analysis than did the

existence of the eventually converted house in *Dixon v Allgood*. That authority was relied upon as showing that particular attention had to be paid to differences in wording between the various statutory provisions. The *Neville* case is of no direct assistance in the present case (as Mr Orme recognised in his appellant's notice and grounds of appeal).

24. In the course of his application for permission to appeal (which was ordered to stand as his appellant's notice and grounds of appeal) reference was made to extracts from *Hansard*. In *Pepper v Hart* [1993] AC 593 the House of Lords held that the rule prohibiting references to Parliamentary material as an aid to the construction of legislation should be relaxed, but only so far as to permit such references where: (1) the wording of legislation was ambiguous or obscure, or its literal meaning led to absurdity; (2) the material relied upon consisted of one or more statements by the minister or other promoter of the Bill together, if necessary, with such other Parliamentary material as was necessary to understand such statements and their effect; and (3) the statements relied on were clear. In the instant case the extracts cited (which concerned the effect of improvements carried out after the appropriate day) amount to nothing more than a statement by the relevant minister (Lord Mitchison) that "in the last resort the construction of a clause of this sort is a matter for the courts". In its decision dated 5 August 2016 refusing permission to appeal, the First-tier Tribunal said it had not been persuaded by such additional material that it had made an error in its preliminary decision. In my judgment, the Tribunal was clearly correct in its assessment of the parliamentary materials relied on by the appellant.

25. It is unnecessary for me definitively to decide whether a substantial change between premises in an earlier state and in a subsequent state is sufficient to constitute a change in the identity of the rateable hereditament sufficient to displace an earlier "appropriate day". When it is necessary for this issue to be decided, it will be important to bear in mind the statutory equation of the expression "the house and premises or any other property" in the 1967 Act with the word "dwellinghouse" in sections 25 of the 1977 Act: see sections 1 (4) and 37 (6) of the 1967 Act; and also the statutory directions: (1) that "the appropriate day" is 23 March 1965 (if the dwelling-house was or formed part of a hereditament for which a rateable value was shown in the valuation list then in force, or consisted or formed part of more than one such hereditament) or (in relation to any other dwelling-house) the date on which such a value is or was first shown in the valuation list: see section 25 (3) of the 1977 Act; (2) that the rateable value is to be ascertained as follows: (a) if the dwelling-house is a hereditament for which a rateable value is then shown in the valuation list, it shall be that rateable value, and (b) if it forms part only of, or consists of or forms part of more than one, such hereditament, its rateable value shall be taken to be such value as is found by a proper apportionment or aggregation of the rateable value or values so shown: see section 25 (1) of the 1977 Act; and (3) that an alteration in the rateable value after the appropriate day is to be taken into account, but only where the variation is retrospective to the appropriate day at the latest: see section 25 (4) of the 1977 Act and Lord Templeman in *Dixon v Allgood* at page 1695 B-C. Clearly Parliament considered that a house and premises might comprise, or might have comprised, more than one rateable hereditament, or might form, or might have formed, part only of a rateable hereditament; and that an alteration in rateable value which did not operate retrospectively as at the appropriate date should have no effect.

It will also be important to bear in mind the observations of Lord Templeman in *Dixon v Allgood* cited at paragraph 21 above, which seem to me to give effect to these statutory directions. All of this leads me to conclude that some change more radical than the mere fact of improvement or structural alteration must have taken place before it can arguably be said that a house and premises have shed their identity and become a new rateable hereditament so as to displace what would otherwise be the appropriate day. I would reject any argument that structural alterations of an insubstantial or non-structural, and still less of a trifling, character are sufficient merely because there has been a functional change in the use of the house and premises.

26. In the present case, I am entirely satisfied that the alterations that took place between the commencement of the Lease in January 1985 and about October of that year to convert the two existing units of residential accommodation into a single dwelling were insufficient to constitute a change in the identity of the rateable hereditament so as bring the appropriate day forward in time to 1985 and to make the rateable value of the property on the appropriate day £310.The works amounted to no more than works of repair and improvement, and the conversion of two residential units into one. In my judgment that is manifestly insufficient to bring any principle of "substantial change of identity" into play, even if there exists a principle of the kind described at paragraph 3-23 of *Hague*.

Decision

27. For these reasons the appeal is dismissed and the First-tier Tribunal's preliminary decision on the basis of valuation is affirmed.

28. This decision determines the issues in this reference and is final on all matters other than the question of costs. The parties may now make submissions on costs in accordance with the details in the letter which accompanies the decision.

DATED 17 February 2017

HH Judge David Hodge QC