

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/24/2000

BETWEEN

S P GRAHAM LIMITED – APPLICANT

AND

DUNLOE EWART (CATHEDRAL WAY) LIMITED – RESPONDENT

Premises: 4 Lower Garfield Street, Belfast

Lands Tribunal – Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI

Belfast – 8th February & 6th March 2002

1. Ben Stevens QC appeared for the Applicant/Tenant. Declan Morgan QC appeared for the Respondent/Landlord.
2. Mr Brendan Hayes, Chief Executive of S P Graham Limited ('the Tenant') and Mr Acheson Elliot, Projects Director of Dunloe Ewart (NI) plc gave evidence.
3. Michael John Burroughs, a Member of the Royal Town Planning Institute, gave expert evidence on town planning matters.
4. The holding comprises ground floor offices at 4 Lower Garfield Street, Belfast, a listed building, and is used as a licensed betting office.
5. In 1985 the then Landlords, the Trustees of the Donnelly Estate, renewed an earlier lease of the holding to the Tenant for a term of 2 years and thereafter from quarter to quarter at a rent of £2,750 per annum.
6. In or around 1994 Dunloe Ewart (NI) plc (formerly Ewart plc) began assembling a site, which included the holding, for a large-scale urban redevelopment or

regeneration scheme ('Cathedral Way'). In April 1997 the interest of the Trustees of the Donnelly Estate was acquired by Dunloe Ewart (NI) plc in trust for William Ewart Properties Limited (a wholly owned subsidiary). In August 2000 their interests became vested in Dunloe Ewart (Cathedral Way) Limited (another wholly owned subsidiary – 'the Landlord'). Mr Elliot explained that the group policy since 2000 was to form a separate company for each development site.

7. Mr Elliot gave evidence about site assembly. Apart from the owners of important and valuable interests in premises fronting Royal Avenue, all other interests had been acquired by the Landlord. Although no firm agreements had been reached, these owners also had indicated a willingness to sell.
8. In December 1999 the Tenant served a Request for a New Tenancy under the Business Tenancies (Northern Ireland) Order 1996 ('the 1996 Order') and in March 2000 made a Tenancy Application to the Lands Tribunal. The request was for a term of 15 years from 1st July 2000.

The Issue

9. The only substantive issue between the parties was the duration of the new tenancy in light of the prospect of redevelopment.
10. The Landlord did not oppose the grant of a new tenancy, accepted the proposal by the Tenant that the rent under the new tenancy be £2,750 per annum and that the other terms of the new tenancy be similar to the current lease.
11. The usual options for taking redevelopment into account in a new lease are either the grant of a limited term and/or the insertion of a redevelopment break clause.
12. Where the timing is uncertain, the practical solution is to insert a redevelopment break; that affects the contractual duration but does not avoid the need to establish grounds of opposition to the satisfaction of the Tribunal if and when exercised. The provisions for such a break may limit the grounds of the 1996 Order on which a landlord may rely if he chooses to go down that route (see e.g. Peter Millett & Sons Ltd v Salisbury Handbags Ltd [1987] 2 EGLR 104).

13. The Landlord suggested that, as a planning decision was not expected to take long, the duration of the new tenancy should be a new tenancy for a term ending on 31st December 2003 with a redevelopment break clause on 6 months notice at any time after 31st December 2002.
14. In this case there is a third option – the exercise of compulsory purchase powers.
15. The Tenant suggested that, as the Landlord was confident of the availability of government support for site assembly through compulsory purchase (and that would protect the tenant's bookmaking licence) there should not be a redevelopment break. As the holding was not yet ripe for redevelopment, the duration of the new tenancy should be the maximum under the 1996 Order – 15 years or failing that, the duration should be 5 or 6 years.

The Prospect of Redevelopment

16. If the ground of opposition for redevelopment is made out, the Tribunal must refuse the grant of a new lease but, at this stage it is only the prospect of redevelopment that is under consideration. In these circumstances the Tribunal must strike a balance between preserving a tenant's right to security of tenure of its holding against the superior right of a landlord to redevelop its premises.
17. The ordinary difficulty of striking that balance is complicated in this case by issues connected with the lack of portability of the Tenant's bookmaking licence under the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 ('the 1985 Order') and the scale and importance of the Landlord's scheme with consequential public interest in regard to the timing of both Planning matters and assistance with site assembly.
18. The attention of the Tribunal was drawn to a number of questions about the real prospects for redevelopment in the short term. Some need only brief consideration at this stage but if and when the grant of a new tenancy is opposed, more critical examination of matters including the Landlord's intentions is appropriate.

19. In principle, to justify taking redevelopment into account:

- It is sufficient to establish only a real possibility of redevelopment happening within the duration of the time span under consideration as opposed to a probability. Although the evidence was sketchy and there was a lack of original and detailed documentation, the Tribunal finds the evidence of the Landlord meets that requirement (see National Car Parks Ltd v Paternoster Consortium Ltd [1990] 1 EGLR 99);
- The bank that had funded site assembly so far had expressed interest in providing funding for the scheme and a substantial part, but not key components, of the site had been acquired. So, the evidence fell short of showing funding to be in place and site assembly approaching completion. But it is not necessary to establish financial viability nor that the premises are “ripe for redevelopment” and the Tribunal finds sufficient progress has been made (see Becker v Hill Street Properties Ltd [1990] 2 EGLR 78, CA); and
- The current Landlord is a company created solely for the redevelopment and there was little evidence that it was a company of substance but it is sufficient that the Landlord does not want to be saddled with a lease that would prevent redevelopment. The precise identity of the property vehicle, which will carry out the redevelopment, need not even be identified; (see Adams v Green & Another [1978] 2 EGLR 46, CA).

Planning and the 1996 Order

20. Article 17 of the 1996 Order deals with duration—

“(1) ... the new tenancy shall be ... a tenancy for such period ... as may be determined by the Lands Tribunal to be *reasonable in all the circumstances* ... “
(Tribunal’s emphasis)

21. The 1996 Order differs somewhat in detail from its English equivalent in regard to a landlord’s opposition on redevelopment grounds – demolition must be accompanied by *substantial development* and the Landlord must produce evidence that a relevant *planning consent* has been granted -

Article 12 paragraph (1)(f) provides that the Tribunal must refuse the grant of a new tenancy if it is satisfied that

“on the termination of the current tenancy the landlord intends—

(i) to demolish a building or structure which comprises, or forms a substantial part of, the holding and to undertake a substantial development of the holding; or

(ii) to carry out substantial works of construction on the holding or part of it;

and that the landlord could not reasonably do so without obtaining possession of the holding”

22. Article 12 paragraph (2) provides that "development" has the same meaning as in the Planning Northern Ireland) Order 1991.

23. Article 13 further provides that

“(1) Where the landlord relies on the ground specified in Article 12(1)(f), the Lands Tribunal shall require the landlord to furnish evidence that any permission required under any statutory provision has been granted to him in respect of the demolition and development, or the works of construction, which he intends to undertake.”

The Likely Timescale for Development

24. The Tribunal will return to the question of site assembly but Planning consent was accepted to be the key consideration for commencement of development.

25. On 7th August 2000 an application had been submitted to the Department of Environment for planning permission for a mixed-use development of Cathedral Way. The intended content included 275,000 sq ft of retail space together with leisure facilities, an hotel, art gallery, car park and apartments.

26. Cathedral Way is in a part of the city that includes several listed buildings, straddles parts of both the City Centre and the Cathedral Conservation Areas and includes the Cathedral Quarter Regeneration Strategy Area. The application was accompanied by applications for listed building consents, conservation area consent and an environmental impact assessment.

27. The Department for Social Development ('DSD') is the department of government in Northern Ireland charged with the regeneration of Belfast City centre.
28. Cathedral Way was in competition for government support with three other major 'retail-led schemes to confirm and strengthen Belfast's regional shopping role' but in mid 2000 DSD announced its conclusion that only one scheme should go ahead and it preferred a different scheme - the Victoria Square Scheme - not Cathedral Way.
29. The then Minister also indicated an interest in supporting another scheme – the College Gate area - as a location for another major retail scheme but "*nothing should be done however to prejudice the Victoria Square location being developed first*". He further indicated an interest in supporting "an acceptable scheme" at Cathedral Way "*which can proceed quickly and without prejudice to the Victoria Square project*".
30. In February 2001 a new Minister confirmed that although the then proposed Cathedral Way scheme would conflict with Victoria Square in terms of timing and content, the door was open for a different scheme "which would not impact adversely on Victoria Square".
31. The Landlord sought a judicial review of DSD's conclusions on the competition. That was unsuccessful and (about May 2001) DSD published its intention to make a Vesting Order to acquire the land for the Victoria Square Scheme. The Landlord and others opposed the Victoria Square Scheme and a public enquiry was scheduled for January 2002.
32. The Landlord then contacted DSD and commenced negotiations in December 2001 with the aim of finding a way to substituting an amended and acceptable Cathedral Way Scheme (the retail element of the scheme was reduced from 275,000 square feet to less than 200,000 square feet) that would not prejudice the Victoria Square Scheme. An accommodation was reached and a Joint Position Statement ('the Statement') was agreed on 21st January 2002. Among other things:

- DSD restated its policy that it did not discourage development *provided that the scale, nature and timing were congruent with the overriding imperative of regeneration;*
- DSD accepted that there was scope for a smaller scale retail development at Cathedral Way, *to be developed within the site during the next 3-5 years which would not undermine the viability of proposals at Victoria Square;*
- DSD supported the principles of a *revised smaller Cathedral Way scheme* (as shown on indicative plans attached to the statement) on the basis that, among other things, *it should be designed for and aimed at a different tenant mix from that envisaged for the high quality retail destination proposed at Victoria Square i.e. aimed at middle market shopping rather than become a new high quality retail destination occupied principally by national multiples;* and
- DSD acknowledged that the Landlord may require assistance with land assembly, if appropriate, having regard to Part VII of the Planning (NI) Order 1991.

33. On the basis of the Statement the Landlord was prepared to unreservedly withdraw its objection to the Victoria Square Development Scheme and proposed Vesting Order.

34. By the time of the hearing, preliminary agreement had been reached with Environment and Heritage Services that the façade of the listed building would be retained but the structure behind it replaced.

35. A development programme had been prepared. The intended progression reflected the desirability of retaining shop tenants on the valuable Royal Avenue frontage until the latest possible date but also the need to carry out extensive site investigations for design purposes.

36. There had been considerable consultation in connection with the original scheme and the Landlord expected to have planning permission for a revised scheme by the end of 2002 but Mr Burroughs thought that unlikely. He expected that Victoria Square was most likely to be protected sequentially through the timing of planning consents (and the timing of assistance with site assembly) i.e. Cathedral Way would

be delayed for 3-5 years. That would give Victoria Square a head start in attracting major retailers as tenants as there would be confusion in retailers' minds if two large-scale schemes came forward together - both would be competing for anchor tenants and major retailers.

37. The time-scale for Victoria Square was that in January 2002 there had been a joint public enquiry into vesting and adoption of a Development Scheme and a decision might be possible towards the end of 2002. Mr Burroughs thought the earliest date for a construction start was in about 2 years' time and his guess was that the government would wish to give Victoria Square 2-3 years of a head start.
38. The Victoria Square project is currently intended by DSD to play a key role in regeneration and to be protected for that reason but, on balance, the Tribunal is not persuaded that timing or sequencing will be the key method:
- Although in mid 2000 the Minister had "decided that nothing should be done however to prejudice the Victoria Square location being developed first", that was a reference to College Gate and it was equally clear that the DSD would support a scheme at Cathedral way "which can proceed quickly".
 - Mr Burroughs had no doubt that DSD and the Planning Service would organise matters so that Victoria Square had a 3 year head start but the Tribunal accepts that, to the extent that timing lies within the DSD control, it expressly acknowledges development within 3 to 5 years, and that is within the same broad time frame as Victoria Square;
 - Mr Burroughs doubted the ability of DSD to see the proposed tenant mix restriction converted into enforceable planning terms, but the Tribunal would be surprised if designs, conditions and perhaps covenants could not be devised to give broad effect to the aim of making Cathedral Way attractive to a different market from Victoria square;
39. Article 31 of the 1991 Order gives the Department a discretionary power to treat an application as a major planning application requiring a public enquiry if, among other things, it affects the whole of a neighbourhood.

40. Mr Burroughs thought the Planning Service should and would adopt that approach but accepted that the question was a matter for the Department's discretion and in discussions with the Landlord, the Planning Service indicated that it was unlikely that the application would do so.
41. The Tenant on 14th February 2002 had written to the Planning Service questioning the view that a public enquiry under Article 31 was unlikely to be required but had not received any response.
42. The discussion between the Landlord and the Planning Service is indicative of attitudes at the coalface and not applying Article 31 would remove the possibility of what many regard as a major source of delay; but on the other hand in the absence of a proper application these discussions cannot be treated as binding and steps might be taken to attempt to force any such application to be treated under Article 31.
43. Mr Burroughs acknowledged that the Planning Service was giving consideration to ways of expediting the planning process and the use of Article 31 generally is under review (see the Department's Publication; '*Modernising the Planning Process*'): there was a back-log of outstanding applications, especially those schemes which a body of professional opinion thought would be better treated as part of the area plan process. A new Belfast Metropolitan Area Plan was in course of preparation and Mr Burroughs said that may be expected to be adopted at some time between 2004 and 2006. However he accepted that the Cathedral Way proposal was generally consistent with planning policy as promulgated in the Belfast Urban Area Plan and Planning Policy Statement 5.
44. Mr Morgan suggested, and the Tribunal accepts, that taking all evidence into account it is highly likely that Cathedral Way is not intended to be held back so as to follow Victoria Square. There is a distinct likelihood that Article 31 would not be applied.
45. Mr Stevens referred to the Landlord's suggestion of a lease for a duration that anticipated when development was likely to take place. The Landlord had originally

said October 2001, then December 2002, then July 2003 and then December 2003. He suggested all these dates were equally optimistic. There was no planning permission, there was no board resolution; none of the essential matters were in place. Mr Stevens suggested that redevelopment was actually 5 or 6 years off.

46. The uncertainties about when planning consent will be available and when other matters, including site assembly, will be completed makes the likely timescale for development so uncertain that the Tribunal prefers not to rely only on a fixed term of years. It prefers the inclusion of a redevelopment break.

The Tenant's Bookmaking Office Licence

47. For reasons connected with the lack of portability of bookmaking licences, it was suggested that from the Tenant's point of view it would be preferable for the Tribunal to order a lease of substantial duration and leave the Landlord to rely on compulsory purchase to acquire its interest.
48. Mr Hayes had been Chief Executive of the Tenant since 1986. He said that the premises at Garfield Street were successful and it is clear to the Tribunal that the main aim of the Company is to preserve its business in the vicinity and it is not its aim to thwart the Cathedral Way scheme. Mr Elliott confirmed that he would wish to facilitate the Tenant in the preservation of its licence.
49. At one point in time the premises had contributed about 7% of company turnover but that was now down to about 3%. Mr Hayes attributed that partly to the run-down condition of the premises, the company considered the prospects were excellent and wanted to remain in the area.
50. Previously the Company had sought to open at alternative accommodation but was unsuccessful. The portability of a bookmaking licence is very restricted as a result of the general application of the 'adequacy test' in the 1985 Order'. However the adequacy test is excluded in certain exceptional circumstances. Mr Morgan suggested that the concerns of Mr Hayes also would be addressed so long as the Landlord established the grounds of Article 12(1)(f) of the 1996 Order. The Tribunal sees the force of that proposition but concludes that to be a matter for the licensing

court, on which it should not express a conclusion. On the other hand Mr Stevens suggested and the Tribunal accepts that compulsory acquisition would create a clear-cut situation that preserves the licence.

Compulsory Purchase

51. Mr Stevens strenuously argued that the Landlord be left to rely on compulsory purchase powers:

- the Landlord was confident of the availability of government support for site assembly through compulsory purchase;
- that would protect the Tenant's bookmaking licence; and
- the holding was not yet ripe for redevelopment;
- vesting would fully reflect public policy as set out in the Joint Position Statement.

52. Mr Morgan accepted the Statement represented public policy but submitted

- that the policy of the 1996 Order was the overriding consideration;
- the balancing of relative hardship pointed in favour of not relying on vesting because of
 - uncertainty; and
 - potential delay.

53. Part VII of the Planning (NI) Order 1991 ('the 1991 Order') to which the Statement refers includes provisions for the acquisition of land by the Department for planning purposes and for Development schemes:

Article 87 contains the relevant provisions. These include:

“(1) The Department may, by agreement or compulsorily, acquire any land where it is satisfied—

(a) that the land is required in connection with a development scheme; or

(d) that it is expedient to acquire the land for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. “

54. Article 86 sets out the procedural formalities for development schemes. These include provisions for objections:

“(3) If objections made to a development scheme are not withdrawn the Department shall, unless it considers them to be solely of a frivolous or vexatious nature,—

(a) cause a public local inquiry to be held by the planning appeals commission; and

(b) consider any objections not withdrawn and the report of that commission;

and may thereafter by order adopt the scheme with or without amendments.”

55. Clearly as set out in the Joint Position statement, DSD contemplated the possibility of using compulsory purchase powers but did not commit itself. Mr Elliot was fully confident that a vesting order was there for the asking. Without prejudging a decision that is a matter for other forums, the prospects of whether and/or when such an order might reasonably be expected to be made is a matter on which the Tribunal may, but only if necessary, form its own view.

56. Mr Elliott accepted it was possible that vesting powers would be required to obtain possession of important interests in shops fronting Royal Avenue. Mr Hayes insisted that neither he nor the company would oppose an application for a Vesting Order under any circumstances, even if there were no alternative premises and at the risk of the licence. He was certain he would find alternative premises and believed he would be able to transfer the licence to them. So, if the only property interest to be vested was that of the Tenant, in light of their undertaking not to object then there would be no enquiry.

57. If vesting, whether or not the Department would adopt a Development scheme for Cathedral Way rather than the more apparently relevant but unusual route of Art 87 (1)(d) above, both procedures adopt the Vesting Order procedure of Schedule 6 to the Local Government Act (NI) 1972 (‘the 1972 Act’) for the compulsory acquisition of land.

58. The joint position statement could not exclude the proper consideration of all relevant matters in any future consideration of a request to use compulsory purchase powers for site assembly and the need for an enquiry cannot be prejudged in the absence of a formal application (see e.g. Cowan v Department of Economic Development; Cowan v Department of Enterprise Trade and Investment [2000] 1 NILR 122 and in another context Regina (Reprotech (Persham) Ltd) v East Sussex County Council The Times March 5 2002). But, it seems clear that if the owners of the shops at Royal Avenue objected then a significant time would be taken up by a public enquiry (even if Development scheme and vesting order enquiries were combined). Mr Burroughs thought that it would be some 2½ years before an enquiry would report.
59. Mr Stevens suggested that there were two relevant policy considerations arising from the 1996 Order. One policy was to protect the public interest in regeneration, the other policy was to provide security for a tenant. Both policies could be dealt with by a long lease and a vesting order. The proper custodian of the public interest in regard to regeneration lay with elected representatives through Government Departments. Although Mr Morgan suggested that that would leave the landlord at the mercy of a government department that was wholly appropriate. There would be no prejudice to the Landlord because of the assurances it had been given and it would avoid potential hardship to the Tenant because of the preservation of the bookmaking licence. The essential point was that it was a very simple method and although it involved accepting that DSD retained control, they represented the public interest in regeneration.
60. The *latest* date at which any vesting process might become operative may not be entirely within DSD's control but the *earliest* date of any Vesting Order would be something that would be largely within its control. Mr Burroughs thought that DSD would time any use of its vesting powers to give Victoria Square an advantage and DSD might be expected not to use their vesting powers until Victoria Square got off the ground.

61. In regard to the business circumstances of the parties, Mr Morgan pointed out that 97% of the Tenant's business came from elsewhere whereas the subject property was at the heart of the landlord's scheme. If the Landlord was disadvantaged the consequences would be much more severe for him than any disadvantage to the tenant. By contrast the potential hardship to the Landlord in terms of relying on and expecting DSD to assist with site assembly punctiliously was very great.
62. The Tribunal accepts that the Joint Position Statement does represent government policy on regeneration and the Cathedral Way Scheme. But the policy of the 1996 Order has a wider ambit and entitles the private landlord to possession for redevelopment whether or not the government is so positively in support that it would consider exercising compulsory purchase powers. Further the vesting route would almost certainly be a time consuming exercise.
63. The Tribunal agrees with Mr Morgan that the policy of the 1996 Order must be the overriding consideration and although the principal policy objective is of course security of tenure for business tenants the landlord's superior right to possession of the premises for redevelopment is a fundamental principle which is not a matter for the Tribunal's discretion. It must be fully reflected in the terms of the new tenancy and other considerations are inferior, although the duration may ameliorate hardship, so far as is possible.
64. It may or may not be the case that termination in accordance with Article 12 paragraph (1)(f) has the consequence that the bookmaking licence is lost but it is not the function of the Lands Tribunal to ameliorate the effect of the 1985 Order policy by substituting a different mode of termination – compulsory purchase – for the provisions of the 1996 Order.
65. The Tribunal concludes that it should not leave the issue of terminating the tenancy to compulsory purchase under the 1991 Order and the 1972 Act.

The Timing of a Redevelopment Break

66. Mr Morgan referred the Tribunal to London and Provincial Millinery Stores Ltd v Barclays Bank Ltd & Another [1962] 2 All ER 163. In that case the tenant had had a

7 year lease and the County Court Judge granted the tenant a new tenancy for 9 years. The Court of Appeal held that in exercising its discretion all proper factors must be taken into account and these included the intention to reconstruct and the fact that the tenant had been in occupation for more than 4 years since the expiration of the contractual term of the original lease. The Court of Appeal granted a tenancy for only 12 months, that period being for the purpose of enabling the tenant to find suitable accommodation elsewhere.

67. The Tribunal accepts that:

- where a break or short lease has been considered on grounds of a landlord's requirement for possession for redevelopment or own use, and
- at the time of hearing, the unexpired duration of the new lease would be relatively very short in comparison with the contractual duration of the current lease,

there are examples of the Courts treating any substantial period of overholding as a factor ameliorating any hardship to the tenant resulting from granting a much shorter term than the current contractual duration. However, it appears to this Tribunal that whether or not that was so would depend on the facts of the particular case.

68. Mr Morgan submitted that the duration of the original term was a factor of considerable importance. Here the original lease was for 2 years and thereafter the Tenants continuing occupation was at risk. What the Tenant was seeking to do now was to change the structure of the relationship so as to remove the risk of redevelopment. The Tenant's proposal for 15 years bore no relationship to the contractual duration of the original lease and even on ordinary principles the duration should be on a par with the original or to maintain similar degrees of risk and protection.

69. Mr Stevens submitted that in this case the original term was very short – 2 years, the overholding very long – now about 15 years and the Landlord seeks an option to break not earlier than 1 year from now; the landlord suggests a redevelopment break clause on 6 months notice at any time after 31st December 2002. But that reflects a concern about a possible pre-emptive strike by the Tenant and anticipates

in reality a date for possession not earlier than 31st December 2003. The Tenant is opposed to any break clause.

70. Although the Tribunal is firmly inclined to the view that present government policy in regard to protection of urban regeneration at Victoria Square is not to rely mainly on development sequentially through control of the timing of consents or assistance but rather design and conditions, that may not be correct or policy may change.
71. The Tribunal concludes that if a redevelopment break is included, the terms for a break should reflect the current case i.e. on the basis of Article 12 paragraph (1)(f) and substantial development in accordance with the indicative scheme attached to the joint Position Statement. Accordingly, on the exercise of the break, the landlord would be required to establish its intention in accordance with the requirements of the 1996 Order and, for example, it would require a relevant planning consent for a scheme along the lines of the indicative scheme. That requirement would allow government policy, including sequencing if appropriate, to be reflected.
72. Circumstances may change and if for any reason the Victoria Square scheme unexpectedly did not proceed in the manner presently envisaged, that should not have the effect of leaving the Landlord in limbo. Mr Stevens suggested that if there was to be a break clause then the lease should be for 15 years. The break clause would deal adequately with the proposed redevelopment and at the end of 15 years the landlord could oppose on any of the grounds. The Tribunal does not agree. The duration of the new lease should otherwise also be limited to reflect the policy of the 1996 Order and the general possibility of redevelopment.
73. The exercise of a redevelopment break would bring the contractual term to an end but bring the matter back to the Tribunal to consider the merits and if appropriate, unless agreement has been reached, to fix a date for the giving up of possession. Bearing that in mind the Tribunal concludes an early date is appropriate. But a minimum of one year's duration from now is very short and the Tribunal concludes that, having regard to the preparedness of the Landlord's scheme, a little longer is fair. The Tribunal also prefers the approach to notice period adopted in the 1996 Order.

74. Mr Stevens suggested that if there was to be a break clause then it should be closely tied into the licensing situation, perhaps including an obligation on the tenant to bring forward an application for a licence; but the difficulty would be the relative timing of the application for the licence, and the landlord might want to press on before the licence was in place. Unfortunately, the Tribunal must accept that the difficulties in constructing a suitable Landlord's option to break consistent with both the 1985 Order and the 1996 Order are too great. If there is to be a break clause the substance of the break clause should be related to the 1996 Order and not the 1985 Order but, where the policy objectives of the 1996 Order can be met in a way that minimises hardship, that approach should be preferred.
75. Such an arrangement might be later considered by the parties during the term of the new lease by an approach from a different direction - in the form of an appropriate agreement to surrender.

Conclusions

76. The Tribunal determines that the lease shall be for a term ending on 30th June 2005.
77. The Tribunal determines that the new lease shall incorporate a redevelopment break on the basis of Article 12 paragraph (1)(f) and further restricted to grounds of substantial development consistent with the indicative scheme attached to the Joint Position Statement. The notice to break/determine shall specify a date for determination not less than 6 months nor more than 12 months from the date of service. The earliest date for service shall be 30th June 2003.
78. The parties are invited to agree a suitable form of words.

ORDERS ACCORDINGLY

Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI

4th July 2002

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:-

Ben Stevens QC instructed by Johnsons, Solicitors, appeared for the Applicant/Tenant.

Declan Morgan QC instructed by Johns Elliot, Solicitors, appeared for the Respondent/Landlord.