

## Compensation for Business Losses - Abolition of the Bishopsgate Principle

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### s20 Compulsory Purchase Act 1965 Tenants at Will etc



- (1) If any of the land subject to compulsory purchase is in the possession of a person having no greater interest in the land than as tenant for a year or from year to year, and if that person is required to give up possession of any land so occupied by him before the expiration of his term or interest in the land, he shall be entitled to compensation for the value of his unexpired term or interest in the land, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain.
- (2) If a part only of such land is required, he shall also be entitled to compensation for the damage done to him by severing land held by him or otherwise injuriously affecting it.
- (3) If the parties differ as to the amount of compensation payable under the foregoing provisions of this section the dispute shall be referred to and determined by the Upper Tribunal.
- (4) On payment or tender of the amount of such compensation all such persons shall respectively deliver up to the acquiring authority, or to the person appointed by them to take possession, any such land in their possession required by the acquiring authority.
- (5) If any person having a greater interest than as tenant at will claims compensation in respect of any unexpired term or interest under any lease or grant of the land subject to compulsory purchase, the acquiring authority may require that person to produce the lease or grant, or the best evidence thereof in his power; and if, after demand in writing by the acquiring authority, the lease or grant, or that best evidence, is not produced within twenty-one days, that person shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.
- (6) This section has effect subject to section 39 of the Landlord and Tenant Act 1954.
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## The Bishopsgate principle (1)



- *Bishopsgate Space Management Ltd v London Underground Ltd* [2004] 2 EGLR 175
  - Preliminary matter
  - Presumed renewal date in assessing value of unexpired term of lease
- B and T made compensation claims under s20 Compulsory Purchase Act 1965- compulsory acquisition of their leasehold interests in a goods yard
- R granted B:
  - Tenancy of lower level of yard for 10 year term from 31<sup>st</sup> March 1999
  - Clause in lease allowed either party to determine the tenancy by 6 months' written notice
  - ss24-28 of the Landlord and Tenant Act 1954 had been excluded
- R granted P:
  - Tenancy of upper level of yard from March 2000; purported to assign to LU- same determination provision and exclusion of 1954 Act
- P granted T:
  - Sub-tenancy of the upper level, 25<sup>th</sup> September 2000- 24<sup>th</sup> January 2003, with provision for termination by 5 months and 2 weeks written notice
- LU- December 2001, served notices to treat and of entry on T, took possession July 2002- London Underground (East London Line Extension) Order 1997

## The Bishopsgate Principle (2)



- Lands Tribunal asked to consider whether T's claim should be assessed on the basis that-
  - 1) its interest in the land at the date of the notice to treat had ended
  - (a) on the expiration of its lease on 24<sup>th</sup> January 2003 or
  - (b) on the earliest date on which its sublease could have been ended by P by notice served on 4<sup>th</sup> July 2002- which would mean 18<sup>th</sup> December 2002
- OR
  - 2) no assumption might be made that the sublease would have been renewed from the date of its termination and no account could be taken of such renewal even if it were possible
- OR
  - 3) T's sublease determined on the date of the determination of the headlease vested in P, ie the date possession was taken of P's interest, and owing to the determination on that date of the headlease, so that: under s20 T had no unexpired term or interest entitling it to compensation
- Tribunal also considered whether it ought to assume that-
  - The lease vested in B at valuation would have been determined at the earliest possible date of determination by notice given by R pursuant to the relevant clause in the lease

## The Bishopgate Principle (3)



- The Tribunal decided:
- When assessing s20 compensation claims, with regard to the value of both an unexpired term and any loss or damage-
  - The Tribunal was obliged as a matter of law to assume:
    - A periodic tenancy
    - A tenancy with an unexpired term of less than a year
    - A tenancy for a term of years containing break clause
  - should determine on the earliest date that termination might have resulted from notice given by the landlord on the date of entry
- NO account should be taken of any possibility of renewal that might have existed in spite of the acquisition

## The nutshell:



- Compensation for business tenants (holding leases outside the security of the 1954 Act) to be calculated assuming the lease will end at the earliest possible date that it could under the terms of the lease
- An Acquiring Authority could assume that landlords would terminate a tenant's interest at the first available opportunity following a Notice to Treat, irrespective of what would happen in reality ie in the 'no scheme world', thereby reducing the level of compensation.

## The unfairness:



- The Bishopsgate decision created a situation where an occupier with no formal interest in the land it occupies might be better off in terms of its compensation entitlement than one occupying under a formal lease.
  - A lessee with a contracted-out lease with an unexpired portion of 20 years, but with provision for a 6-month landlord's break clause, could have a lesser entitlement to compensation than a licensee
- President in Bishopsgate commented at para 67 (comparing s37 LCA 1973):
  - “We should also note the particular provisions contained in section 37 and 38 of the 1973 Act for payment of compensation for disturbance where no interest is acquired. There is an entitlement to such compensation where a person in lawful possession is displaced in consequence of the acquisition of the land by an authority possessing compulsory purchase powers. A disturbance payment covers both removal expenses and, where the person was carrying on a trade or business on the land, the loss sustained by reason of the disturbance of the trade or business consequent upon his having to quit the land. It is expressly provided that, in estimating such loss, regard is to be had to the period for which the land occupied by the claimant might reasonably have been expected to be available for the purpose of his trade or business.”

(contd)



- It was clear then that the Bishopsgate principle did not apply to occupation of land pursuant to a licence for the purposes of section 37 of the 1973 Act. Section 38(2) provides that regard shall be had to the period for which the land occupied by the claimant may reasonably have been expected to be available for the purpose of his trade or business, whereas there was no such similar wording in section 20 of the 1965 Act
- The President in Bishopsgate commented: “section 37(2) gives mere licensees a more generous compensation than is available to holders of short tenancies under section 121 of the Land Clauses Consolidation Act 1845 and since 1965, section 20 of the Compulsory Purchase Act 1965 which replaced it.”

## Compulsory Purchase Association- major reform project $\frac{L}{C}$

- Aim- to remove apparent unfairness of s20 of the Compulsory Purchase Act 1965 for short term tenants and lessees with a break clause in their leases. Fairness and consistency required that the law be amended to bring the losses to businesses caused by a CPO into line with other recoverable losses.
  - The problem was that the two different parts of the LCA were in direct conflict on the matter.
  - The real injustice was on the value of the business.
  - An experienced surveyor should be able to take account of the prospect of lease renewal when valuing the interest.
  - The expectations of the business to continue in occupation should be taken into account in valuing the interest.
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## Law Society response to DCLG consultation on reform of the compulsory purchase system $\frac{L}{C}$

- Q7: “Do you agree that the compensation payable to those with minor tenancies should take account of the period for which the land occupied by the claimant might reasonably have been expected to be available for the purpose of their trade or business?”
  - 15. “We agree with the proposals to address the unfairness arising from the Bishopsgate principle.”
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## The reform:



- Part 2 Neighbourhood Planning Act 2017- implementation of the reforms on which the Govt consulted in 2016
- Section 35 aims to correct the disparity between different types of tenancy or licence to occupy when it comes to the assessment of compensation for disturbance
- The reform will put compensation for short term tenants and tenants with a break clause on the same footing as for licensees with no interest in the land (and protected tenancies)
- For tenants without security of tenure under the Landlord and Tenant Act 1954, the likely prospect of the continuation or renewal of the tenancy must be taken into account, how long would the tenancy reasonably have been expected to have continued had there been no compulsory purchase, and the terms and conditions of that tenancy

## s35 NPA 'compensation for disturbance', amending s47 LCA 1973



"47 Compensation in respect of land subject to business tenancy

(1) This section applies where

(a) in pursuance of an enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority-

(i) acquires the interest of the landlord in land subject to a tenancy, or (ii) acquires the interest of the tenant in, or takes possession of, land subject to a tenancy, and

(b) before the authority acquired the interest or took possession of the land, the tenant under the tenancy was carrying on a trade or business on the land.

(2) The principles in subsections (3) and (4) are to be applied in assessing the compensation payable by the authority to the landlord or the tenant in respect of the acquisition of the interest in or the taking of possession of the land or, as the case may be, under section 121 of the Lands Clauses Consolidation Act 1845 or section 20 of the Compulsory Purchase Act 1965 (tenants from year to year etc).

(3) Regard must be had to-

(a) the likelihood of the continuation or renewal of the tenancy,

(b) in the case of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies, the right of the tenant to apply for the grant of a new tenancy,

(c) the total period for which the tenancy may reasonably have been expected to continue, including after any renewal, and

(d) the terms and conditions on which a tenancy may reasonably have been expected to be renewed or continued.

(4) It is to be assumed that neither the acquiring authority nor any other authority possessing compulsory purchase powers have acquired or propose to acquire any interest in the land."

**current s47 LCA 1973**

“47.— Compensation in respect of land subject to business tenancy.

(1) Where in pursuance of any enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority-

(a) acquire the interest of the landlord in any land subject to a tenancy to which Part II of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies; or

(b) acquire the interest of the tenant in, or take possession of, any such land, the right of the tenant to apply under the said Part II for the grant of a new tenancy shall be taken into account in assessing the compensation payable by the acquiring authority (whether to the landlord or the tenant) in connection with the acquisition of the interest or the taking of possession of the land; and in assessing that compensation it shall be assumed that neither the acquiring authority nor any other authority possessing compulsory purchase powers have acquired or propose to acquire any interest in the land.”

