HOUSE OF LORDS SESSION 2007–08
[2008] UKHL 10
on appeal from: [2006] EWCA Civ 1171

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

Majorstake Limited (Respondents) v Curtis (Appellant)

Appellate Committee

Lord Hope of Craighead
Lord Scott of Foscote
Lord Walker of Gestingthorpe
Baroness Hale of Richmond
Lord Carswell

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LORD HOPE OF CRAIGHEAD

My Lords,

1. I have had the advantage of reading in draft the speeches of my noble and learned friends, Lord Scott of Foscote and Baroness Hale of Richmond. I am grateful to Lord Scott for setting out the facts and the procedural history and to Baroness Hale for her explanation of the wider context in which the legislation that we are concerned with needs to be viewed. For the reasons Baroness Hale gives I would allow the appeal and make the order that she proposes.

2. The question is whether the phrase "the whole or a substantial part of any premises in which the flat is contained" in section 47(2)(b)(ii) of the Leasehold Reform, Housing and Urban Development Act 1993 enables the landlord, unconstrained by their existing state, to identify the premises by drawing his own line around the tenant's flat in support of his counter-notice or whether it refers to the existing and objectively recognisable state of the premises. No direct assistance can be gained from the provisions in Chapter I of Part I of the Act, and the interpretation provisions in section 62 at the end of Chapter II, of which section 47 forms part, do not help either. The answer to the question must be found in the words used in section 47, read in the context in which they appear.

3. I think that the use of the present tense, indicated by the word "is", provides the best guide to what the phrase means. It directs attention to what can be seen on the ground at the time when the tenant serves his notice. What can be seen on the ground is not what is to be found only in the mind of the landlord. Of course, it is for the landlord to decide the extent of the development which he wishes to carry out. As

the statute recognises, it is his intention with regard to this part of the statutory test that needs to be demonstrated. So long as the intended development extends to the whole or a substantial part of the premises in which the flat is contained, this requirement for the making of an order under section 47(1) of the Act will be satisfied. But the extent of the intended development is not determinative of the extent of "any premises in which the flat is contained". The context indicates that the extent of those premises does not depend on the intention of the landlord. On the contrary, it is something to be determined objectively by examining the existing state of the building within which the tenant's flat is situated.

4. This interpretation has the merit of preserving an appropriate balance between the tenant's interests as against those of the landlord. It gives due weight to the requirement that the redevelopment which the landlord wishes to carry out must extend, if not to the whole, at least to a substantial part of the premises. The right to acquire a new lease of a flat is given to the tenant by section 39 of the Act on payment of a premium. This right would be seriously undermined if all that the landlord needed to do to defeat the tenant's right was to declare his intention to redevelop the flat. That is why an intention to redevelop something more than the flat itself is required. Section 62(3) also makes it clear that it will not be enough for the landlord to declare an intention to redevelop a garage or outhouse let with the flat. The argument that it is open to the landlord to determine the extent of the premises in which the tenant's flat is contained by drawing an imaginary line around it of his own choosing and which suits his own interests is objectionable for an analogous reason. As May LJ said in the Court of Appeal, units of that kind would be artificial: [2006] EWCA Civ 1171, [2007] Ch 300, para 65. They would have been put together simply to achieve the statutory requirement. They could not, in the proper sense of the phrase, be said to be premises in which the flat is contained.

5. The tenant's concession that one floor in a block of flats, and even adjoining flats on the same floor, could be regarded as premises within which his flat was contained seems to me to be open to question. But it does not help the landlord, as his intention to redevelop does not extend in that direction. His case is that the premises extend to the flat immediately below and contiguous to the flat which the tenant occupies. In agreement with May LJ, I would hold that it overstrains the statutory language to say that two flats on different floors, and those two flats only, are premises in which the tenant's flat is situated. Unless there is some other obvious subdivision within Boydell Court, the premises in

which the flat is situated would seem to me to mean the entire structure of Block B. But each case must, inevitably, depend on its own facts.

LORD SCOTT OF FOSCOTE

My Lords,

6. This appeal raises a short issue of construction of section 47(2)(b) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). On this issue turns the question of whether the appellant, Monty Curtis, is entitled to acquire a new lease of his flat, Flat 77, on the seventh floor of Block B, Boydell Court, St John's Wood Park, London NW8.

7. Boydell Court consists, for relevant purposes, of two blocks of flats, Block A and Block B. Block A contains sixty flats on eleven floors; Block B contains fifty flats on nine floors. The ground floor of Block B includes a caretaker's flat and storage and other communal facilities. Lifts and a stairway run from the ground floor to the upper floors. The eight upper floors contain six flats each and common parts such as corridors. Flat 77 contains two bedrooms, one reception room, a kitchen, bathroom and a second toilet. The demise includes one-half in depth of the joists between the floor of Flat 77 and the ceiling of the flat beneath and one-half in depth of the joists between the ceiling of Flat 77 and the floor of the flat above. Mention needs to be made not only of Flat 77 but also of two other flats in Block B. Flat 79 is a flat on the seventh floor adjoining Flat 77. Flat 74 is the flat on the sixth floor immediately below Flat 77.

8. Mr Curtis holds Flat 77 under an Underlease dated 22 July 1957 which demised the flat for a term of 51 years from 25 March 1957 reserving a ground rent of £440 per annum.

9. Chapter II of the 1993 Act gives a tenant of a flat who holds a lease granted for a term of more than 21 years the right to claim from the landlord a new lease of the flat for a term expiring 90 years after the expiry date of the current lease. The right is exercised by the service of a notice of claim under section 42 of the Act. The landlord must respond to the tenant's notice by serving a counter-notice stating whether or not

the tenant's entitlement to a new lease is accepted (section 45). But, if the lease has less than five years to run when the tenant's claim is made, the landlord may state in his counter-notice that he intends to apply to the court for an order under section 47(1) of the Act "on the grounds that he intends to redevelop any premises in which the flat is contained" (section 45(2)(c)). Where such a counter-notice has been served

> "…the court may…by order declare that the right to acquire a new lease shall not be exercisable by the tenant by reason of the landlord's intention to redevelop any premises in which the tenant's flat is contained…" (section 47(1)).

However, section 47(2) of the Act provides as follows :

> "(2) The court shall not make an order under subsection (1) unless it is satisfied –
>
> (a) that the tenant's lease of his flat is due to terminate within the period of five years beginning with the [date on which the section 42 notice of claim was given to the landlord]; and
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> (b) that for the purposes of redevelopment the landlord intends, once the lease has so terminated –
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> (i) to demolish or reconstruct, or
>
> (ii) to carry out substantial works of construction on,
>
> the whole or a substantial part of the premises in which the flat is contained; and
>
> (c) that he could not reasonably do so without obtaining possession of the flat."

10. On 16 September 2003 Mr Curtis gave notice to the respondent, Majorstake Ltd, claiming to exercise his right to acquire a new lease of Flat 77. It is accepted that the notice was a valid one. Majorstake responded by serving on 21 November 2003 a section 45 counter-notice stating its intention to apply to the court for an order under section 47(1) that Mr Curtis' right to acquire a new lease should not be exercisable on the ground that it, Majorstake, intended to redevelop premises in which Flat 77 was contained. It is accepted that the section 45 counter-notice was a valid one. Majorstake then duly commenced proceedings in the Central London County Court for a declaration that Mr Curtis' right to a

new lease was not exercisable. Attention must now shift to section 47(2) of the Act.

11. Majorstake's original redevelopment intention had been to combine Flat 77 and Flat 79 so as to create a single larger flat on the seventh floor. But by the time the case came to be heard in the Central London County Court the intention had changed to an intention to combine Flat 77 with Flat 74, the flat beneath Flat 77, so as to form a larger flat of the sort apparently known in the jargon of the trade as a "duplex" apartment. The intention was that the former Flat 74 would contain four bedrooms and three bathrooms and be connected by a stairway to the former Flat 77 which would contain a reception room, a kitchen and dining area, a conservatory and a bathroom. The entrance to the new apartment would be through the existing entrance to Flat 77. The existing entrance to Flat 74 would become a fire escape exit. A complete re-wiring of the new apartment and the construction of new internal walls as well as the installation of the stairway would be necessary. The question was, and is, whether these proposals satisfied the conditions required by section 47(2) of the Act. It is accepted that these proposed works could not be carried out by Majorstake without obtaining possession of Flat 77. So the section 47(2)(c) condition is satisfied. And it is accepted that the proposed works constitute "substantial works of construction" within the meaning of those words in section 47(2)(b)(ii). The only remaining question is whether the proposed works of construction will be works on "the whole or a substantial part of any premises in which [Flat 77] is contained". The works will be works on Flat 74 and Flat 77. That much is clear. But what are the "premises in which [Flat 77] is contained"? And, once the "premises" have been identified, are Flat 74 and Flat 77 "a substantial part" of those premises within the meaning of those words in section 47(2)(b)?

12. It is clear that the "premises in which [Flat 77] is contained" must be something more than Flat 77 itself. It is clear also that the "premises" in which Flat 77 is contained must be identified by reference to the state of affairs before the proposed works of development are carried out. If the proposed works were to be carried out, the new apartment would constitute, in the ordinary use of language, "premises" in which the former Flat 77 was contained. But section 47(2)(b) is looking for the pre-development "premises in which [Flat 77] is contained". In the County Court Majorstake argued that Flat 74 and Flat 77 together constituted "premises" in which Flat 77 was contained. But His Honour Judge Cowell thought that for section 47(2) purposes the premises in which Flat 77 was contained must be Block B or at least some self-

contained part of Block B. The question whether Flats 74 and 77 constituted, for section 47(2)(b) purposes, a "substantial part" of Block B was not addressed. Majorstake's application for an order under section 47(1) was dismissed, so it was presumably assumed that they did not.

13. The Court of Appeal, by a majority, disagreed with Judge Cowell on the "premises" point: [2007] Ch 300. Counsel for Mr Curtis accepted that the expression "the premises in which the flat is contained" could not, in relation to Flat 77, be restricted to Block B as a whole but submitted that the expression referred to an "existing recognisable unit", such as a whole floor of a building, within which the flat in question was contained. If that were right, works on Flat 77 and Flat 79, both on the seventh floor, might have constituted works of construction on a part of premises within which Flat 77 was contained, namely, the seventh floor of Block B, but the proposed works on Flat 77 and Flat 74, being works on flats on different floors, would not. However Moore-Bick LJ did not accept the legitimacy of the distinction between contiguous flats on the same floor and contiguous flats on different floors. He concluded that any part of Block B which comprised contiguous flats could constitute premises in which, for section 47(2) purposes, each of the flats was contained. Neuberger LJ agreed. He thought the word "contained" in the section 47(2)(b) expression could "fairly be said to be capable of carrying with it the notion of the 'premises' being a single piece of property which is greater than, and includes, the flat concerned": para 37.

14. Since neither of the learned Lord Justices accepted any necessary limitation on the size of the piece of property that, when added to the subject flat, could constitute the "premises" in which the flat was contained, both accepted that a landlord might satisfy the section 47(2)(b) condition, and thereby deprive a tenant of his right under the 1993 Act to a new lease, by establishing an intention to redevelop the tenant's flat together with a wholly insignificant adjacent area such as a box-room or a broom cupboard. For my part I doubt very much whether their construction would ever lead to that apparently absurd conclusion. Section 47(2) prevents the court from making a section 47(1) declaration unless the conditions of section 47(2) are satisfied. Section 47(1) enables, but does not oblige, the court to make the requested declaration if the section 47(2) conditions are satisfied. Sub-section (1) says that the court "*may* …by order declare …." It does not say "must" or "shall". Counsel, when this point was put to them, told your Lordships that it had been held by the Court of Appeal in *Willingale v Globalgrange Ltd* [2000] 18 EG 152 that "may" in section 47(1) meant "must". That case,

in my opinion, is no authority for that broad proposition. The case was one in which a landlord had failed to serve any counternotice in response to a notice served by tenants under Chapter I of the 1993 Act to acquire the freehold of their leasehold premises. The issue was whether in those circumstances the landlord could challenge the terms of acquisition proposed by the tenants in their notice. The county court judge held that the landlord could not and a two-man Court of Appeal, giving *extempore* judgments, dismissed the appeal. It is true that May LJ, who gave the leading judgment, said that the "statute does not work if there is a discretion" but he was referring to the word "may" in section 25(1) of the Act in a case where the landlord had failed to comply with the statutory procedural requirements of section 21. The case is no guide to how section 47(1) should be applied to a case where a landlord is seeking to satisfy the section 47(2)(b) condition by claiming an intention to redevelop the tenant's flat together with an insignificant additional part of the building in which the tenant's flat is contained, an additional part added to the tenant's flat for the proposed development simply in order to produce "premises in which the flat is contained" and thereby satisfy section 47(2)(b). The "box-room" objection to Moore-Bick LJ's and Neuberger LJ's construction of "premises" is an objection based on a premise that I am unable to accept. In the circumstances postulated the court would not, in my opinion, be obliged to make the section 47(1) declaration sought by the landlord.

15. Moore-Bick LJ and Neuberger LJ, having held that Flats 74 and 77 together constituted the "premises in which [Flat 77] is contained, "did not need to consider whether the proposed works of construction were works on "the whole or a substantial part" of those premises. They obviously were. May LJ dissented. He was prepared to accept that the expression "any premises in which the [tenant's] flat is contained" might apply to premises consisting of less than a whole building or block and was "prepared to suppose that the full seventh floor of this block of flats would qualify" (para 64). But he did not accept at para 65 that "…some artificial unit…which would not otherwise be recognised as an existing containing unit…" could qualify and he did not accept that Flat 77 on the seventh floor and Flat 74 on the sixth floor could be described, for section 47(2)(b) purposes, as "premises in which [Flat 77] is contained". It was, of course, clear that Block B could constitute premises in which Flat 77 was contained, but May LJ did not go on to consider whether the proposed works to Flats 74 and 77 could be described as works "…to a substantial part…" of Block B.

16. My Lords I find myself in complete agreement with May LJ that the combination of Flat 74 and Flat 77 cannot be described, for section

47(2)(b) purposes, as "premises within which [Flat 77] is contained". A reasonably literate non-lawyer who read sections 45 and 47 of the 1993 Act would see the reference in sections 45(2)(c), 47(1) and 47(2)(b) to the landlord's intention to redevelop "any premises in which the flat is contained". If the reader knew about Block B and its constituent flats and were asked in what premises Flat 77 was contained, it would take the reader no time at all to answer with confidence that Flat 77 was contained in Block B. If the reader were then asked whether the premises in which Flat 77 was contained could be described as the seventh floor of Block B he would, I think, look puzzled and find the question surprising. He might answer that to call each floor of Block B the "premises" in which each flat on the floor was contained would be an unusual use of the word and would require a special definition of "premises". But if he were asked whether a flat on one floor of Block B and the flat either immediately above or below that flat could be described as together constituting the "premises" in which each flat was contained he would, I suggest, doubt the familiarity of his questioner with the English language. Harry Potter, we are told, received letters addressed to him at "The Cupboard under the Stairs, 4 Privet Drive, Little Winging". "The Cupboard under the Stairs" might have constituted "premises" for the purpose of letters from Hogwarts but for the purposes of construction of the 1993 Act a normal use of the English language must be assumed. I do not accept that it could possibly have been the Parliamentary intention that the "premises in which [Flat 77] is contained" could consist of Flat 77 and a contiguous flat, whether contiguous vertically or horizontally. The meaning of the word "premises" in section 45 and 47 of the 1993 Act is, of course, dependent on the context, but I can, for my part, find nothing in the statutory context that justifies attributing to the word a meaning that it would not ordinarily bear. In the context of Chapter II of the Act "premises" refers, in my opinion, to a self-contained unit of which the subject flat forms part. Thus adjoining houses in a row of terraced houses could be described as "premises" in which each house was contained. And a house in which one or more flats was contained could be described as the "premises" in which each flat was contained. But a floor of Block B could not, in my opinion, be described, for sections 45 or 47 purposes, as the "premises" in which each flat on the floor was contained.

17. The construction favoured by the majority in the Court of Appeal appears to me to have been over-influenced by the references in sections 45(2)(c), 47(1) and 47(2) to *"any* premises". The use of the word "any" indicates, it is suggested, that it was not simply the obvious premises, e.g. the block containing a number of flats, that Parliament had in mind. In my respectful opinion this is much too slender a reed to bear the weight of what I regard as an unnatural construction of "premises".

18. In my opinion, in respectful agreement with Judge Cowell, the "premises" in which, for sections 45 or 47 purposes, Flat 77 is contained is Block B. The question does, therefore, arise whether the proposed works of construction on Flat 74 and Flat 77 are works on "…a substantial part of…" of Block B. This is not a question which was addressed either in the county court or in the Court of Appeal. Nor was it addressed in the printed Cases of either Mr Curtis or Majorstake. It is accepted, however, that the proposed works of construction are "substantial works" for the purposes of section 47(2)(b). In the expression "substantial works" the adjective "substantial" denotes, in my opinion, works that are not trivial or, as one might say, insubstantial. There is no other yardstick than impression. The issue is one of fact and degree. The same approach should, in my opinion, be taken to the question whether Flats 74 and 77 constitute a "substantial" part of Block B. They are two of the fifty flats in the Block. In percentage terms two out of fifty, four per cent, does not sound substantial. I doubt, however, whether that is the right approach. Each flat is a substantial item of property, an item of considerable value. Each flat, as part of the Block, could not, in my opinion, be regarded as a trivial or insignificant part. If this point had been the subject of proper examination and argument I would have taken a great deal of persuading that the proposed works of construction on Flats 74 and 77 were not works on a "substantial part" of Block B for the purposes of section 47(2)(b). As it is, however, in the absence of proper argument on the point, I will with some reluctance set aside my doubts and concur with my colleagues in allowing this appeal.

LORD WALKER OF GESTINGTHORPE

My Lords,

19. I am in complete agreement with the opinion of my noble and learned friend Baroness Hale of Richmond, which I have had the privilege of reading in draft. For the reasons given by Baroness Hale I would allow this appeal and make the order which she proposes.

BARONESS HALE OF RICHMOND

My Lords,

20. Part I of the Leasehold Reform, Housing and Urban Development Act 1993 conferred two important new rights upon the long leaseholders of flats. Chapter I gave qualifying tenants of "flats contained in premises to which this Chapter applies" the right collectively to acquire the freehold of those premises. This extended to leasehold flats the right of enfranchisement provided for leasehold houses by the Leasehold Reform Act 1967. Chapter II gave individual tenants the right to acquire a new lease which would last for 90 years from the date when their present lease would come to an end. In each case, a price must be paid in accordance with the valuation principles laid down in Schedules 6 and 13 respectively. In summary this is the sum of the landlord's present interest in the premises to be acquired, any diminution in value of other premises owned by the landlord, and half the so-called "marriage value", in essence the extent to which the value of the whole is greater than the sum of the separate parts.

21. Both were motivated by the well-known problems attached to the ownership of flats. Freehold ownership is possible but difficult because the burden of positive covenants (for example to maintain the lower floors so as to support the upper floors) cannot at present run with the land. Fresh covenants have to be negotiated each time there is a change in ownership. The Law Commission's recommendations to remedy this problem have never been implemented: see Report on the Law of Positive and Negative Covenants, 1984, Law Com No 127. Leaseholds, on the other hand, can contain positive covenants which bind successive landlords and tenants under the doctrine of privity of estate. But unless the lease has been granted for hundreds of years, it eventually becomes a wasting asset. The capital originally invested in it dwindles away. Eventually the lease becomes unmortgageable and unmarketable. The leaseholder therefore needs to negotiate the purchase of the freehold or a lease extension from the landlord. But, as the authors of *Hague on Leasehold Enfranchisement* 4th ed, 2003 (para 1-14) observe, "there are few comparable situations where the bargaining positions are quite so unequal". There is also a positive disincentive to the leaseholder to spend any more money than absolutely necessary in maintaining or improving the flat.

22. By the 1980s, long leaseholds had become an increasingly common form of tenure of flats, perhaps because rent control and Rent Act protection had made periodic tenancies so much less attractive to landlords. But in addition to the wasting asset problem, leaseholders might be faced with a combination of poor management and high service charges. The solutions attempted by the Landlord and Tenant Acts 1985 and 1987 were not wholly successful. All of this was well recognised by a Government which was anxious to extend home ownership to as wide a section of the population as possible.

23. The 1993 Act was passed to remedy the problems arising from long leaseholds of flats by enabling leaseholders to acquire either the whole premises or a new lease at a price which the legislators thought fair. It recognised that the relationship between the freehold owners of blocks of flats and their qualifying tenants was no longer an ordinary landlord and tenant relationship. It was thought to be a staging post on the journey towards freehold flats. Nevertheless, both Chapter I and Chapter II gave the landlord the right to resist either collective enfranchisement or the grant of a new lease if it intended to redevelop. Section 23(1) provides that the court may "by order declare that the right to collective enfranchisement shall not be exercisable in relation to those premises by reason of that landlord's intention to redevelop the whole or a substantial part of the premises". Section 23(2) sets out the matters of which the court has to be satisfied before making such an order. We are concerned with section 47, which makes the equivalent provision in Chapter II.

24. Section 47(1) provides that the court may "by order declare that the right to acquire a new lease shall not be exercisable by the tenant by reason of the landlord's intention to redevelop *any premises in which the tenant's flat is contained*;..." (emphasis supplied). Section 47(2) provides that the court shall not make an order under subsection (1) unless it is satisfied:

> "(a) that the tenant's lease of his flat is due to terminate within the period of five years beginning with the relevant date; and
> (b) that for the purposes of redevelopment the landlord intends, once the lease has so terminated –
>
> (i) to demolish or reconstruct, or
>
> (ii) to carry out substantial works of construction on,
>
> the whole or a substantial part of *any premises in which the flat is contained*; and

(c) that he could not reasonably do so without obtaining possession of the flat."

Mutatis mutandis, these mirror the conditions for resisting collective enfranchisement in section 23(2).

25. The issue for us is as to the meaning of the phrase "any premises in which the flat is contained" in section 47(2)(b). It is common ground that it cannot simply mean the flat itself. But the landlord argues that it means the tenant's flat together with any other part of the building which is capable of being identified by a continuous line drawn on a three dimensional plan of the building; in other words, this is a space which is defined by the landlord itself when making its plans to develop within the building. In this particular case, the landlord wishes to convert the tenant's flat and the one immediately below it into a single "duplex" flat or "maisonette" over the two floors. The tenant argues that it means a single recognisable unit of space containing the tenant's flat within the building or the whole building.

26. The Court of Appeal, by a majority, favoured the construction argued by the landlord: [2006] EWCA Civ 1171, [2007] Ch 300. May LJ dissented. He held, at para 65, that "[t]he premises have to contain the flat and have to be an existing recognisable unit which may sensibly be said to do that, not some artificial unit, put together simply to achieve the statutory requirement which would not otherwise be recognised as an existing containing unit". The tenant appeals.

27. I am grateful to my noble and learned friend, Lord Scott of Foscote, who has set out the facts and the procedural history in some detail. In summary, the appellant is the tenant of flat 77, on the seventh floor of Block B, Boydell Court, in St John's Wood Park. His lease is for a term of 51 years from 25 March 1957 and thus expires on 24 March 2008. Boydell Court comprises two blocks of flats, Block A and Block B. Block A contains 60 flats on eleven floors. Block B contains 50 flats on nine floors. It has an entrance and communal facilities on the ground floor, and lifts and stairs serving all floors. The eight upper floors contain six flats on each floor and common parts.

28. The respondent is the freehold owner of the whole of Boydell Court. The appellant's immediate landlord is Luckworth Properties Ltd, a wholly owned subsidiary of the respondent, which has a headlease of

99 years from 25 March 1957. Luckworth also holds a 999 year lease of flat 74, Boydell Court, the flat immediately below flat 77. The appellant gave notice to the respondent under section 42 of the 1993 Act claiming to exercise his right to acquire a new lease in September 2003 (the respondent is the correct recipient of the notice because Luckworth does not have a long enough reversionary interest to enable it to grant a new lease of 90 years from 24 March 2008). The respondent served a counter-notice under section 45 of the 1993 Act, stating that it intended to apply to the court for an order under section 47(1).

29. That application was made in January 2004. The redevelopment then proposed was to combine flat 77 with the adjoining flat, flat 79, to create a single large flat. In December 2004, however, the proposal changed to combining flats 77 and 74 into a duplex apartment, with the entrance and living accommodation on the upper floor and four bedrooms on the lower. This would involve reducing both flats back to a shell, cutting through a floor to create an opening for a new staircase between them, installing the new staircase, replacing the windows in both flats, constructing new internal walls, rewiring, laying new flooring, installing four new bathrooms, a new kitchen, a new heating system and new false ceilings and doors.

30. The respondent's application was heard in the Central London County Court in November 2005. The appellant accepted that the landlord did indeed intend to carry out the proposed development, that it consisted of substantial works to a substantial part of both flat 74 and flat 77, and that it was necessary to obtain possession of both to enable the development to be carried out. All the conditions in section 47(2) were thus fulfilled, save for the issue before us: were flats 74 and 77 together "any premises in which the flat is contained" for the purpose of section 47(2)(b)?

31. The judge dismissed the respondent's application. He did so by finding a link between the concept of "premises" in Chapter II with the concept of "premises" in Chapter I. By virtue of section 3(1), the right of collective enfranchisement in Chapter I applies to "any premises" if, inter alia, "(a) they consist of a self-contained building or part of a building". Section 3(2) provides that a building is self-contained if it is structurally detached, and part of a building is self-contained if it constitutes a vertical division of the building and that part can be developed independently of the rest and the services are either provided independently or could be so provided without significantly interrupting the supply of services to the rest of the building. The judge therefore

held that "any premises" in section 47 meant Block B or, if there were any vertical division in Block B, that part of Block B in which flat 77 was contained.

32. The Court of Appeal rejected that construction. Nor does the appellant now support it. Section 39 expressly applies the definitions of "qualifying tenant" and "long lease" in sections 5 and 7 of Chapter I for the purposes of Chapter II. Had Parliament wished also to apply the definition of "premises" it could have done so, but it did not. Furthermore, section 101(1) defines a "flat" for the purpose of Part I as "a separate set of premises...". Clearly, therefore, Parliament contemplated that "premises" might mean something less than a whole building.

33. Rather, the appellant argues that the "premises" must be a physical space which is objectively recognisable at the time when the tenant serves his notice. It cannot be a notional space which is defined by the landlord in whatever way it chooses. The majority of the Court of Appeal, in adopting the respondent's construction, had to accept that it would be open to a landlord to define a space containing the flat and an adjoining box-room or even part of the hallway outside the flat. This would allow landlords readily to defeat the right which Parliament had intended the tenant to have. Furthermore, it would deprive the concept of a "substantial part of [the] premises" of any meaning; the smaller the space the landlord chose to define, the easier it would be to say that the proposed redevelopment was of a substantial part of the premises in which the flat is contained. Far from being clear and objective, as the Court of Appeal appeared to think, the landlord's construction would be its own subjective creation. The tenant would have no idea when serving his initial notice what "premises" the landlord might seek to redevelop and thus to defeat the tenant's claim.

34. For the landlord, it was pointed out that almost all the modern legislation interfering in freedom of contract between landlord and tenant has preserved a right in the landlord to redevelop the property. The Rent Acts did not do so expressly, but allowed a landlord to regain possession of the property if it provided the tenant with suitable alternative accommodation. The Housing Act 1985 allows a social landlord to regain possession of a dwelling let under a secure tenancy if it proposes to demolish or reconstruct or carry out work on the building or part of the building comprising the dwelling, provided that suitable accommodation will be available for the tenant: section 84(2)(b), Schedule 2, ground 10. The Housing Act 1988 gives the landlord of a

dwelling let under an assured tenancy the right to regain possession if it proposes to demolish or reconstruct or carry out substantial works to the dwelling or part of it or any building of which it forms part, provided certain other conditions are fulfilled: section 7(3), Schedule 2, ground 6. The Agricultural Holdings Act 1986 contains provisions allowing the landlord to change the use of the land from agriculture to some other purpose: section 26(2) and Schedule 3, Case B, and section 27(1)(f). The Landlord and Tenant Act 1954 allows the landlord of business premises to oppose the grant of a new tenancy on the ground that he intends to demolish demolish or reconstruct or do substantial work on the premises comprised in the holding or a substantial part of it: section 30(1)(f).

35. In each of these cases, it is for the landlord to decide what works, if any, it wishes to do. Provided that the intention is genuine, the tenant cannot resist possession on the ground that it is not a sensible thing to do. Thus, it is said, in the present context the landlord can decide what works it wishes to do and the extent of the premises upon which it wishes to do them.

36. My Lords, it will be noted that each of the statutory provisions cited is different, reflecting the different contexts in which they arise and the different social and economic purposes of the legislation in which they are contained. They are all of them directed mainly at the redevelopment of the particular dwelling or holding which has been let. They contain within them such conditions or qualifications as are designed to reflect the particular balance between the interests of landlords and tenants that the particular legislation wished to achieve.

37. There can be no doubt about what the 1993 Act was designed to achieve. It was designed to give long-leaseholders of flats rights as close as possible to those of freeholders, at a price approximating to the market price, though subject to some statutory assumptions. That purpose would be frustrated if the landlord could defeat either of those rights by proposing to do comparatively minor works to the building involved. I accept that the definition of premises in Chapter I is not applied in Chapter II, but it is legitimate to look at the scale of redevelopment which would defeat the right of collective enfranchisement in Chapter I in order to consider what scale of redevelopment would defeat the right to a new lease in Chapter II. Section 23(2) is in almost identical terms to section 47(2). It contemplates demolition or reconstruction of or substantial works of construction to a whole or a substantial part of a whole building or self contained part of a building. These are major works, requiring a large

investment in proportion to the value of the premises, not simply the reconstruction of a small part for the purpose of making a profit on that part.

38. Nor can it have been Parliament's intention to allow the landlord to define the "premises" for itself. That would in many cases allow it to defeat the right to a new lease. The purpose of granting the right to buy a new lease was to support the value of the old. The final years of long leases can now be bought and sold with a reasonable expectation that they can be extended when they come to an end. There has to be some objective way of estimating how likely it is that the landlord will be able to prevent that.

39. Hence it seems to me clear that "any premises in which the flat is contained" must be an objectively recognisable physical space, something which the landlord, the tenant, the visitor, the prospective purchaser would recognise as "premises". In common with Lord Scott, I have little doubt that, if one asked a visitor, "in which premises is flat 77, Boydell Court, contained?", the visitor would say "Block B". The visitor would not further sub-divide the space. In a row of terraced houses, or in a pair of semi-detached houses, the visitor would regard each house as the "premises". In a single block of flats with several entrances leading to separate staircases, the visitor might also say "Block B" rather than the whole building. Much would depend upon the physical facts on the ground. This is a much more objective test than that proposed by the landlord and in most cases would lead to very similar results to those in collective enfranchisement cases in Chapter I.

40. It has hitherto been taken for granted that, if the premises are Block B, then two flats out of the fifty do not constitute "a substantial part of" the premises. Were it otherwise there would have been no point in the appellant pursuing matters to this House. The respondent has not hitherto sought to argue otherwise. In my view, it was right not to do so. "Substantial" is a word which has a wide range of meanings. Sometimes it can mean "not little". Sometimes it can mean "almost complete", as in "in substantial agreement". Often it means "big" or "solid", as in a "substantial house". Sometimes it means "weighty" or "serious", as in a "substantial reason". It will take its meaning from its context. But in an expression such as a "substantial part" there is clearly an element of comparison with the whole: it is something other than a small or insignificant or insubstantial part. There may be both a qualitative element of size, weight or importance in its own right; and a quantitative element, of size, weight or importance in relation to the whole. The

works intended by this landlord are substantial in relation to each of the flats involved, but those flats do not in my view constitute a substantial part of the whole premises. I would not in any event consider it right to decide the case against the appellant on a point which was not taken against him in the courts below by a respondent who has been represented by expert counsel at all levels in these proceedings.

41. For these reasons, I would allow this appeal, dismiss the landlord's claim under section 47(1) of the 1993 Act and declare that the counter-notice in question is of no effect. By virtue of section 47(4) the landlord is obliged to serve a further counter-notice, but I understand that that has already been done pursuant to the order of the county court judge, so the process of granting a new lease may now proceed.

LORD CARSWELL

My Lords,

42. The issue before the House is the interpretation of a statutory phrase "any premises in which the flat is contained" in section 47(2)(b) of the Leasehold Reform, Housing and Urban Development Act 1993. The phrase is at first sight deceptively simple, but, like many phrases in legislative documents, its interpretation gives rise to difficulties as one seeks to apply it in circumstances which may not have been envisaged by those who enacted it. It is an old calumny that lawyers almost never see meaning as simple or clear, but the extent of these difficulties may be seen from the differences of opinion which have developed between the several judges in the courts below and, to some degree, between your Lordships.

43. The factual and legislative background have been set out in the opinions of my noble and learned friends, Lord Scott of Foscote and Baroness Hale of Richmond, which I have had the advantage of reading in draft, and I need not repeat them. The landlord wishes to carry out development work to the appellant's flat number 77, on the seventh floor of Block B, Boydell Court, St John's Wood Park, London. The proposal is to construct a duplex apartment out of that flat and number 74, situate immediately below 77. The issue is whether the combination of flats 77 and 74 comes within the definition of "any premises in which the flat [number 77] is contained". The landlord's contention, which

prevailed with the majority of the Court of Appeal, is that the expression "any premises" is perfectly general and apt to refer to the whole or any part of a building. The tenant's contention, which has found favour with your Lordships, is that it means the building as a whole or a self-contained part of it.

44. The word "premises", stemming from the Latin *praemissa*, is in origin a conveyancer's term, meaning everything in a deed which precedes the habendum: Sheppard's Touchstone, 7th ed, (1820) p 741, and cf *Metropolitan Water Board v Paine* [1907] 1 KB 285, 297, per Ridley J, *Maunsell v Olins* [1975] AC 373, 386, per Lord Wilberforce. It is not in dispute that the meaning of the word in the present context must be its ordinary meaning, rather than the technical conveyancing meaning. As Lord Wilberforce went on to say in *Maunsell v Olins*:

> "From this it has passed into the vernacular, at least a quasi-legal vernacular, as referring to some sort of property, but not without any precise connotation. A reference to Stroud's Judicial Dictionary shows that a number of different meanings have been acquired of which the most central appears to be buildings or some kinds of buildings, but it would be far too much to say that there is any prima facie, still less any grammatical, meaning from which one should start."

That ordinary meaning must be governed by the context of the statute in which it is found, for it does not have any universally applicable meaning as a matter of general usage. In the search for the meaning intended by Parliament, one may have regard to what Viscount Simonds said (facing a very different problem in a very different context) in *Attorney-General v Prince Ernest Augustus of Hanover* [1957] AC 436, 461:

> "For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use 'context' in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief

> which I can, by those and other legitimate means, discern the statute was intended to remedy."

Viscount Simonds added a cautionary paragraph, in which he pointed out that the guiding principles of interpretation and exposition of statutes are stated in so many ways that "support of high authority may be found for general and apparently irreconcilable propositions". One other cautionary note to which one should also have regard is the familiar advice that rules of construction are our servants and not our masters. As Thomas Jefferson expressed it in a letter in 1823:

> "Laws are made for men of ordinary understanding, and should, therefore, be construed by the ordinary rules of common sense."
>
> (*The Writings of Thomas Jefferson*, HA Washington, (1854), 7:297).

45. Applying principles of statutory interpretation is always much more difficult than enunciating them. The question in the present appeal is what the legislature is to be taken to have intended in using the chameleon-like word "premises" in section 47(2)(b), bearing in mind that it is qualified by the adjective "any". I think it is clear that it does not have the conveyancing meaning, and that one must look for the ordinary meaning in the context of this statute. Judge Cowell derived assistance from a comparison with the use of the word "premises" in Chapter I of the Act, in particular section 3, but all members of the Court of Appeal agreed, for what I consider convincing reasons, that he was wrong to do so. Nor do I think that there is any direct assistance to be derived from phrases in other legislation, although a contrast with the objects of earlier Acts may throw some light on the statutory intention behind this one.

46. I do find some significance in the use of the qualifying word "any". If it had been intended that the premises in section 47 were to be nothing less than an entire block of flats, it would give less weight to that word. Its effect would be limited to situations where the landlord's holding consists of several blocks, as in the present case, and it would permit the redevelopment of one block, but not part of a block. I do not find it necessary to express a concluded opinion on the point, but I incline to the view that a portion of a building may be intended, in order

to give effect to the word "any". One can envisage a situation where a landlord wishes to obtain possession of a ground floor flat in order to carry out a scheme turning the whole of the ground floor, hitherto let in flats, into a shopping development. I doubt if such a scheme could be ruled out as being outwith section 47. It may also be necessary at some time to consider a proposal to redevelop a vertical portion of a building divided like an Oxford or Cambridge college into separate staircases. I do wish therefore to reserve my opinion for further argument on the extent of the portion of a building which might be said to qualify.

47. If, as I think is probably correct, the premises may be less than an entire block, the question is how much is required to constitute "any premises in which the flat is contained". I was originally attracted to the argument presented on behalf of the respondent and to the reasoning of the majority in the Court of Appeal. Having read and considered at some length the opinions prepared by your Lordships, however, I have come to the conclusion that I cannot accept the respondent's case. Two factors in particular have led me to this conclusion. The first is that, as my noble and learned friend Lord Hope of Craighead emphasises in paragraph 3 of his opinion, attention should be directed to what can be seen on the ground at the time when the tenant serves his notice. It could not be said of the proposed unit consisting of flats 77 and 74 that it would form a potential development readily visible to the observer. That reinforces the tenant's contention that the development contemplated by section 47 is an existing recognisable unit. Secondly, I am influenced by consideration of the statutory objective of Parliament in passing the 1993 Act. The statutory focus was on the conversion of the rights of long-leaseholders of flats into rights akin to those of freeholders, compensating the landlords by receipt of a sum in the approximate region of market price. For this reason, as Lady Hale sets out in paragraph 37 of her opinion, the scale of redevelopment required to allow a landlord to defeat the right of collective enfranchisement is relevant. That has to be major works, otherwise a landlord could too readily frustrate the object of allowing enfranchisement. It is right to say that the considerations in Chapter II, dealing with the rights of individual tenants to renew their leases, are not entirely the same, but the Chapter I requirements are something of a pointer. The landlord must be entitled to possession for the purpose of redevelopment, in the interests both of a fair balance between landlords and tenants in those of a healthy property market and the maintenance of good quality housing stock. I am impelled to agree, however, that to allow the landlord to "cherry-pick" among separate flats, assembling what may be regarded as artificial units, and obtain possession in order to carry out small-scale conversions such as the present would be contrary to the apparent intention behind the legislation. There is likely to be some artificiality

and possibly some ambiguity inherent in any construction of section 47, but I am now persuaded that the landlord's case should not be accepted.

48. On the question whether the proposed development could constitute works on a substantial part of the premises, I do not think it possible to form an opinion if the question has not been resolved of the extent of the building which can constitute the premises for the purposes of section 47. I therefore do not consider it profitable to speculate on the question whether the work on flats 77 and 74 would qualify if the whole of Block B were to be regarded as the relevant premises.

49. For the reasons which I have given I would concur with your Lordships in allowing the appeal.