IN THE CENTRAL LONDON COUNTY COURT **Case No: CHY01141**

CHANCERY LIST

HIS HONOUR JUDGE COOKE

B E T W E E N:

HORSERACE BETTING LEVY BOARD

Claimant

COPY

- and -

GROSVENOR WEST END PROPERTIES

Defendant

JUDGMENT

UPON THE TRIAL of this Action

AND UPON HEARING Counsel for the Claimant and for the Defendant

AND UPON HEARING Oral evidence

AND UPON READING the documents recorded on the Court file as having been read

IT IS ORDERED THAT:

And in pursuance hereof having agreed as to the letter a copy of which is annexed

1. The Defendant do execute and deliver to the Claimant a new lease of the First Floor Offices, Terminal House, 52 Grosvenor Gardens, London SW1W 0AU in the terms of the lease as annexed hereto as Annex 1 for a term commencing on the termination of the current tenancy and expiring on 30 September 2003 at a rent of £310,000 per year payable quarterly in advance on the usual quarter days and a new lease of the Basement Store Room 25, Terminal House, 52 Grosvenor Gardens, London SW1W 0AU in the terms of the lease as annexed hereto as Annex 2 for a term commencing on the termination of the current tenancy and expiring on 30 September 2003 at a rent of £1,320 per year payable quarterly in advance on the usual quarter days and that the Claimant do execute and deliver to the Defendant counterparts thereof SUBJECT to and without prejudice to the right of the Claimant within 14 days after the making of this Order to apply to this Court pursuant to section 36 (2) of the Landlord & Tenant Act 1954 for the revocation of this Order;

2. The Claimant be at liberty to make the application last referred to in these proceedings;

3. The Defendant pay the Claimant's costs of ~~this action save in respect of the rent issue~~ to be subject to a detailed assessment if not agreed.

He issue as to the length of the term of the lease

Dated the day of January 2002

HORSERACE BETTING LEVY BOARD V GROSVENOR WEST END PROPERTIES

01CHY1141

JUDGEMENT OF JUDGE ROGER COOKE.

THE PARTIES

The Claimant "The Board" is a statutory body , established by the Betting Gaming & Lotteries Act 1963. Its function is to raise a hypothecated tax by way of levy on the bookmaking industry and to spend that tax for the benefit of racing. It is the sort of arrangement that is perhaps not much in tune with modern economic and governmental thinking and it is not surprising to find that the Government have concluded that it has had its day and the industry can be left to make its own arrangements. The current proposal (which requires primary legislation) is that the Board will be abolished and the likely date of its seeking to function (following a period of winding down) is September 2003 (hence the termination date which is sought).The legislation has yet to be formulated and in particular the mode of winding up and dissolution is not known but nobody seriously differs from this broad statement (including the likely date)

The Defendant (the Landlords) is an emanation of the Grosvenor Estate, a group of linked companies which is one of the largest and best known institutional landlords in the London.

THE PROPERTY

The Board are tenants of the first floor (and also a basement store) of an office block known as Terminal House ,52 Grosvenor Gardens SW1 (" the Block").The Block is a substantial stone clad building with classical detailing built it is believed in 1929 and reminiscent of the sort of designs associated with Lutyens & Baker. It is very roughly trapezoid in shape with the short "nose" abutting Buckingham Palace Road and one long side (on which is the present entrance) abutting Grosvenor Gardens. It is just across the road from Victoria station.

The part of the building further from Buckingham Palace Road is built on massive girdering over the District and Circle lines of the London Underground.

There is no doubt that this is a building well due for major refurbishment. It was built long before the days of modern office equipment and requires new channelling/raised flooring and similar facilities for computer equipment. The lifts require to be re-sited & rebuilt and the office accommodation itself is of an old fashioned cellular type which it is thought would be much improved by conversion to modern open plan designs. The entrance is to be re-sited and the present entrance area remodelled as retail.

The resiting and rebuilding of the lifts will involve excavation near the new front of the building (siting at the rear is impossible because of the Underground)

Nobody doubts that such work is desirable and nobody disputes that if it is to be done the first floor will be at the very centre of the work. It would be impossible for the Board to remain in occupation if the work is to be done.

Planning permission was granted by Westminster on, in fact the second day of this hearing.

THE HOLDING

The office accommodation within the demise amounts to about 9500 square feet . A small area of four interlinked rooms is occupied by GamCare (a charity dealing with the needs of gambling addicts). If the Boards were to have to move premises it is accepted that GamCare would go off on their own. The existing accommodation by reason of shape and design is wasteful of space and it now appears from the evidence that if well designed space is available the actual needs of the Board would be in the region of 7000-7500 square feet (but needs to include a board room). Obviously the less well designed the space the larger the area that may be needed. The basement store is small in extent and is let under a separate lease. The Landlord wish to continue this arrangement and so there are two separate applications before me. However it is not suggested that the tenants would want the store for any greater or less period than they require the office accommodation. The term for the two will inevitably be the same.

THE LEGAL PRINCIPLES

If the timing had been a little different the landlord would have been able to resist a new tenancy on ground (f), but at the date of the s 25 notice that could not have been said with certainty. Accordingly a new tenancy is bound to be granted as all accept.

Under s 33 the Court has a discretion as to the length of the term, which it has to determine as reasonable in all the circumstances.

I was taken to a number of cases (some of them well known) that deal with the tension between the tenant's right to a new tenancy and the landlord's intention to develop in the near but not immediate future, the Court acknowledging on the one the hand the tenant's proper claims but on the other that the act is not to be used as an instrument to defeat development. The cases, as cited to me begin with **Reohorn v Barry Corporation 1956 1WLR 845** and end for the present with **Becker v Hill St Ppties 1990 2 EGLR 78.** I draw attention in particular to the following propositions:

1. Some of the authorities are on redevelopment break clauses (ie. where a landlord may redevelop in the future but not yet so that the Court gives him an opportunity to determine the tenancy prematurely when he wishes to redevelop and can establish ground (f) opposition.) I accept Mr Clark's submission that these cases are in practical terms indistinguishable from cases where the Court (having been persuaded that there will be redevelopment in the future) simply grants a short term (as would be the case here). In both cases the following practical considerations apply

(a) the "break date" or termination date is not necessarily the end of the story or of the tenant's rights thus
(b) a s 25 notice still has to be given , the tenant has the right to apply for a new tenancy and the landlord must establish his ground (f) if the tenant is to be prevented from obtaining another new tenancy. (See mutatis mutandis **Adams v Green 1978 Vol 247 EG 50 @52)**

Applying this principle to a case such as the present it is of course perfectly true that even if the landlords had an unassailable ground (f) opposition (as they might well have) the tenants could "play the system" and obtain for themselves some months beyond September 2002 before possession could be ordered against them . If the Landlord had by that time changed its mind about the development then of course a new tenancy could be obtained for (probably) whatever period was required.

This may be compared with what the Tenant asks for in this case, which is a fixed term tenancy to take them to the end of their anticipated period of operations but beyond (temporally) the likely point when the above possibilities would arise and need to be considered.

2.The Court in considering what tenancy to order has to strike a balance between two predominant considerations (i) so far as is reasonable the lease should not prevent the superior landlord from using the premises for the purposes of redevelopment (ii) a reasonable degree of security of tenure should be provided for tenants .The Court must produce a reasonable balance between the two. This proposition is a near verbatim quotation of the dictum of Fox LJ in **J.H.Edwards v Central London 1983 271 EG 697 @ 698.**

3. The authorities certainly establish that the tenant's rights ought not to be used to prevent the landlord from using the premises for redevelopment (this is expressed semantically in different ways in different authorities but all so far as I can see come down to the same thing) see e.g **Adams v Green (above)** at p 51 " it was no part of the policy...[of the Act] to give security of tenure to a business tenant at the expense of preventing redevelopment." (Stamp LJ).However to my mind it is clear (as indeed Mr Rainey submits) that this is all subject to the concepts of reasonableness as in proposition 2 above. If the rule were to have been , as I do not think it is or was, that the landlord only has to show the appropriate intention to redevelop in the future for the length of the term/time of the break clause, to be as and when he wishes there would be no room for any concept of striking a balance at all. None of the authorities cited to me suggested in any way that the Court was bound to make a mechanistic order based simply on the date when the landlord said he would be ready without giving weight to all relevant factors on both sides.

4. It is quite clear on the authorities that the landlord does not have to go too far in showing the prospect of redevelopment. What needs to be shown is a real possibility, not a certainty. One is looking at future events (" crystal ball gazing " as both Counsel said frequently in this case) in an area where certainty is not possible. Thus (of importance here) the landlord need go no further where one consideration is whether he will obtain vacant possession from the other tenants than show (by for instance reference to the availability of money and the state of likely negotiations) that there is a real possibility of obtaining vacant possession. See e.g. **NCP v Paternoster 1990 15 EG 53.** It is understandable that this should be so, because of the protection which the tenant will retain if the prognosis is wrong (see above).

5. Mr Rainey submits and I accept that, allowing for all of this as one must the starting point is that the tenant, no ground (f) having been

established or even asserted is entitled as of right to a new tenancy. It necessarily follows that the debate is about what are to be the limitations on that tenancy. See **Chipperfield v Shell 42 P&CR 136** where the Court of Appeal remarked that the grant of **any** term must (in the case before it) necessarily prevent the landlord from implementing their scheme to that extent.

6 The authorities themselves show (simply by way of example if no more) that break clauses have been inserted at differing stages of the new tenancy thus (i) 7 year lease with break clause at the end of year 5 **(J.H.Edwards)** (ii) break clause on 6 months notice after the first 7 months **(Reohorn)** (iii) new tenancy for 12 months only **(London & Provincial v BBL 1962 1WLR 510)** (iv) 5 year terms with break after year 3 **(Amika v Colebrook 1981 EG 243)** (v) term approximately 3.5 years from the date of the hearing **Becker v Hill St (above)** a case with unusual features to which I will return (vi) break clause at any time **(NCP case-- above)** (vi) 14 years with a break clause on two years' notice **(Adams v Green above)**. There are other examples as well but these will probably do. What I think the orders actually made by the Courts in these cases suggest is that (allowing for balancing considerations) the nearer the likely development date the more likely the Court is to give a short period or an early break clause, which is probably no more than common sense. They do not however suggest a necessarily slavishly close link to that date.

7 I return to **Becker** because this is a case of some interest which may be of assistance here. The tenant was a dentist in the Harley St area who intended to retire about 3.5 years from the date of the hearing .He wanted to stay until he retired, a term described by Dillon LJ as " not very long". The evidence showed (i) that it would take the landlords about 12 months to start to proceed with their scheme (ii) on the facts it would be very difficult for the tenant to relocate for the short period left before he retired. This is a case naturally relied on by Mr Rainey. It differs from the present one in that the scheme was still some time away (and indeed was not yet fully formulated) but is in line with the present case to the extent that the tenant is having to deal with circumstances where the business will come to an end at a finite date in the near future.

8. What make the instant case unique is that it represents a contest between a "very very" short term (10 months or so from the hearing) and a very short term (22 months or so from the hearing)

THE RELEVANT CONSIDERTATIONS EXAMINED.

A. The likelihood of the development

1. There is no doubt that redevelopment is possible in the planning sense. The plans have been drawn up and permission granted . All other things being equal (which they may not be) the landlords would be in a position to develop in the autumn of 2002.

2.There is no doubt that the landlords would have the money. They are an institution of known substance and nobody argues otherwise.

3.The Landlords' problem may lie with the other tenants. It is useful to consider these facts in a little depth. Any landlord of a large block of property who wishes to redevelop would ideally wish for all tenancies to end on the same date. For a variety of reasons they hardly ever do. So it is common enough for a landlord to find itself giving s 25 notices to as many tenants as it can and buying out those whose tenancies are substantially longer (see the comments in the **NCP** case.) Sometimes of course this can make the very redevelopment uneconomic. In this case the landlords have already come to an arrangement with a majority of the relevant tenants (by no means all tenants need to be displaced) whereby vacant possession of the parts which the Landlords will require will be given in the latter part of 2002. The problems that remain are

(i) the Board

(ii) Gatwick Express. They have a tenancy ending in 2008. They have no particular wish to move. Negotiations have taken place and appear to be continuing. The possibility to put it no higher is that they have their price and the landlords will in the end pay it, but this is not certain. However on my view of the facts there is a serious probability (good enough for my purposes) that an arrangement can and will be made .Of course if it can not then the development will be held up and it would follow that the Landlords would not be able to resist the grant of a further tenancy to the Board. I do however just draw attention to a point which I raised in the course of argument i.e. that in their negotiations with Gatwick Express the landlords have it at present open (depending on the result of this case) to negotiate for possession in 2003 rather than 2002. They may not wish to do this but the possibility is there.

(iii) Orange. They are the well know telecommunications firm and they have an installation on the roof . Over the adjournment of the hearing in December 2001 an exchange of correspondence which I

have seen make it highly probable that a suitable arrangement will be made with them and I proceed on that basis.

Obviously there may be market factors between now and the autumn of 2002 which may affect the viability of the scheme. The full effect of the "September 11th" factor (a reference to the atrocities in the USA on that day) may not be known for some time . But the authorities show clearly enough that the Court has to do the best it can on the facts it has and on the facts I have the overall conclusion must be (and the contrary cannot be and is not very seriously argued now) that the Landlords can show a seriously probability of being able to proceed in September 2002 and that is good enough.

B THE CONDUCT OF THE PARTIES.

Each side criticised the other for the way they had gone about making their dispositions. To my mind there is little to be gained from such criticisms . Both sides are responsible business people (one of them a public body) who have to make decisions with their own interests in mind and against a moving background of events with the inevitable result that with hindsight the decisions may not always have been the best ones. I will however briefly describe the matters relied on

1. The Landlords' real problem is that they could be said to have aimed at too early a date. They have succeeded in putting themselves in a position where 2002 autumn is the logical date to aim at for possession not necessarily because of any feature of the scheme but because they have in the event successfully negotiated possession with the majority of the tenants for that date. The imperative must now be so far as they are concerned to strike a bargain with Gatwick & Orange for that date and try to get the Board to fall in line which they cannot do commercially because of the Board's position. They are really forced into a position of saying to the Court, every one else is or will be in line and so must the Board be. It is unfortunate for both sides that this is so as it creates a conflict which in other circumstances might have not have arisen. But the Landlords are not to be criticised for this. There is much to be said, if you wish to redevelop for going ahead sooner (when you have figures that may stand up) rather than later and to take advantage of leases falling in. To my mind it is hard to criticise this or, as the Board would seek to do, simply to describe it as an assumption of risk by the Landlord which the Landlords must somehow bear.
2. Similarly I am not impressed by the argument that the Board assumed risks, if anything that argument is weaker. What happened was this.

the Board realised that its lease would fall in and it took the opportunity of commission an in depth study from its surveyor ,Mr Tapson (who gave evidence before me as the Board's expert) to see what might be on offer which would suit the Board (not necessarily all in the Victoria area). The Board came very close to agreeing a lease of premises in the Millbank Tower – a well known office block on the side of the River near to the Tate (Britain) Gallery and about 7 minutes walk from Pimlico underground station (the Tower is well known to judges as the headquarters of the Judicial Studies Board). However at that moment it became known that the Board would come to an end in 2003. A decision was taken based on staff considerations to stay where they were. That decision has been criticised. Certainly if they had gone to Millbank Tower the present trouble would have been avoided, but the decision on the evidence I have heard was a respectable and responsible decision taken in the light of facts known at the time and I would have thought it is unfair to describe it as an assumption of risk. I agree with Mr Rainey's submission that the reality is that all that the Board, who is a sitting tenant with a right to a new tenancy, has done is not move. If they have such a right, one might ask, why should they move?

C. THE BALANCING FACTORS ON THE BOARD'S SIDE.

1. Mr Rainey submits that to be given a term to September 2002 is of no use to the Board. I agree. True it is that if the development cannot happen they will get a further new term. But their difficulty is that like it or not they need premises to September 2003. They are a public body with responsibility for public money and public functions. They have to keep "open for business" until the government closes them down as it will (this is not a matter of evidence, there was no detailed evidence on this, but of common sense deduction, if they fail to behave in this way they would be failing in their public duty). So what they will have to do is proceed on the basis that if all they get is the very short term they will need to find further premises anyway, likewise for a very short term. If they get the very short term this is inevitable. I agree.
2. There is no question of financial loss. The statutory compensation would cover the move, even if it did not the Landlords are prepared to make a substantial financial contribution.
3. A part of the case on which a great deal of time was spent was the evidence of the two experts. The Board called its surveyor Mr Tapson to whom I have already referred. The Landlord called Mr Jonathan Evans. Mr Tapson's evidence was directed to saying that there was nowhere to be found that would meet the Board's requirements by

way of a short term lease (looking in the main at " second hand" properties as was almost inevitable). Mr Evans was called to , in effect, show the contrary. Mr Tapson's evidence in it original state could be fairly criticised (as it was) on the basis that it really flowed from an instruction to consider not what was available which would suit the Board but what was available by way of 9500 square feet. As I have already pointed out the two are not the same. Mr Evans brief by way of contrast was to consider what there was which would suit the Board. However the experts in accordance with what is now the usual practice, met and considered the options with a view to narrowing the ground between them. In the course of that operation Mr Tapson did in fact consider properties outside his original brief and which represented more correctly what the Board ought to be looking for.

Although this part of the evidence took up a lot of time its nature and effect can to my mind be fairly shortly stated thus:

(a) All that either expert could do was to show by way of example what was available now and with the further factor of economic trends (so far as known) turn this into a prediction of what might be available when the Board had to start looking (bearing in mind that the Board will want to look fairly soon but not contract too much before or possibly too much after 30th September 2002)

(b) Mr Evans (unlike Mr Tapson) had looked outside the Board's chosen area of Victoria. However having considered the substantial number of properties looked at by Mr Evans the experts agreed that there were four only which might do they were (by reference to their numbers in the agreed schedule)

17. 30 Buckingham Gate
22 Portland House, Stag Gate
32 21 Dartmouth St.
33 4 Millbank

Of these No 32 is said by the Tenants to be too small, on the best view it is very near the line.

No 22 is interesting as being a quite different concept. It is a new idea of letting office space. Essentially the building is treated as divided up into so many work stations and so a flexible amount of space can be put together and then partitioned off in any way the client chooses. Such arrangements are very much geared to short term letting

No 33 is thought by the Tenants not to be ideal because it is in a different and rather less accessible part of Millbank than is the Tower and is less attractive to staff.

My conclusion thus far is that four properties two of which have some question mark over them are a worryingly small number if only because they are precisely four more than none at all. It does not indicate a reliable degree of availability. If one could be sure that at the right moment something like No 22 would be available with sufficient space one would be more confident that there would be a safe solution, but the evidence suggested that this was still quite a new concept and one could not rely on many or possibly any such properties being available when the vital moment came.

(c) There appeared to be the following economic considerations (i) the market trend, possibly exacerbated by the 11th September facto, suggested that there might be more properties available rather than less. (ii) the completion of modern developments in the Victoria area whose consequent effect would be the release of further second hand premises on to the market, appeared not to be likely to take place at a date which would assist.

(d) putting these factors together my conclusion would be that although one could not say that there would be **no** suitable properties (predominantly of the second hand kind) available at the vital time (which had been Mr.Tapson's starting position) and one could indeed say that there might be a few more available when the time came(applying the economic factors) but one could not say with confidence that at best there were likely to be more than a handful. When one is down to handful there is inevitably an element of chance affecting availability of the right property at the right moment. I would conclude also that given these factors and looking at the Landlords' argument at best it is still asking the Board to assume a degree of risk , uncertainty and worry which it ought not to be asked to assume without good reason

(e) The Landlords however question why it would be necessary to limit the available letting to short term lettings. After all the Tenants could (as they could) take a 10 year lease and assign the balance. To my mind to say this in the same breath as to rely on the fact that the market may be falling is less than fair to the Tenants. It puts on to them an element of commercial risk which to my mind it is, especially in the predicated circumstances ,not fair to ask them to bear. Furthermore as they are being wound up at an ascertainable date it is dubious at best whether the market would accept them as a good covenant except on payment of a substantial rent deposit. Deposits can be lost and this is public money.

4. The Tenants have always taken the view that they ought to remain in the Victoria area. They had (when Mr Tapson was first instructed to consider relocation) considered properties further afield. They were thinking of something north of Oxford St which would be fortuitously (I think) nearer certain other institutions connected with the Turf. On the other hand they have historically wanted to be nearer to the Home Office (although that is not now their responsible ministry, one can see a desirability of being near "Whitehall" in the broader sense).They are not of course a trading concern and it can be said that a concern that is purely offices has less worry about where it is located—especially given modern methods of communication. However one of the reasons why they would want to stay concerned staff. They have key staff who are not easily replaced (and would I suppose be the less easily replaced if they had to be replaced for a short term only) many of whom arrive via Victoria station. They are afraid of losing them. Some such factor indeed was part of their thinking in deciding not to move to the Millbank Tower. Mr Clark for the Landlords says it is difficult to see why (given they once contemplated a move to Oxford St) the decision to wind up affects the suitability of location .In any event he says there is no real risk of losing staff, they will stay to collect the redundancy money. I think one must first remember that the people in charge of the Board have not been criticised as fanciful in their thinking or not knowing their own staff best and Mr Brack's first witness statement (para 6) expresses the concern with some conviction. I am entitled at least to think that they probably do have a sensible reason for thinking as they do. Furthermore however I would more readily conclude that (i) when people know their job is due to come to an end they may well be less concerned with the redundancy money than with finding something new soon and (ii) if a change of location to somewhere less convenient takes place for the last few months of the job there is a pressure to move earlier rather than later. While this may not be the strongest element in the case it is I think strong enough to a represent a reasonable apprehension on the part of the Tenants so that it is reasonable for them to want to stay in the Victoria area.
5. To my mind a factor of considerable importance is one which appeared to play no part in the case until the closing speeches and that is the inconvenience of moving. In his closing speech Mr Clark said that part from one factor (which he discounted probably rightly) this was not really being said. But in fact it had been. In Mr Brack's first witness statement (para 6 to which I have also referred above) it was stated in terms that the disruption caused by any office move would accelerate the decision of staff to seek alternative employment

(NB **any** move, not just out of Victoria). He then instanced what would happen if they did in convincing detail. This was not challenged in cross examination and I think (because it was in a witness statement) was rather lost sight of as can happen until Mr Rainey in closing drew attention to it. I do not think it stands alone, because irrespective of evidence common-sense suggests that moving a substantial and fairly complex office (this is) can be a time consuming and disruptive affair, usually justified either by need or improvement in premises/conditions. Almost inevitably it is something which has to be followed by some degree of settling down to new arrangements. I would have regarded it as an undesirable burden to place on an organisation in its last few months of life unless there is a real justification for it.

6. It is I think worth remembering that, seen from the Landlord's perspective, what the Board is asking for is a period which when it expires will be accompanied by the near certainty of the Board's departure (and therefore the availability of the premises for occupation by the workmen) as opposed to a shorter period which is at risk of being followed by the strategic use of proceedings which will or may make the " start date" for the works uncertain.

Pausing here I would conclude that the factors on the Board's side amount to a reasonably strong requirement to allow the Board to remain until September 2003 unless those reasons can be outweighed by substantial reasons on the part of the Landlords.

D.BALANCING FACTORS ON THE PART OF THE LANDLORDS

1. Until just before the trial began the Landlord's case really amounted to saying that they would, in all probability be in a position to start work by autumn 2002 and that they ought to be allowed to take the opportunity of doing so. If there were no factors on the Tenants' side , i.e. the Tenant was someone continuing in business for the foreseeable future who was going to have to contemplate moving some time and might as well be contemplating it now I can conceive that such an argument might tip the balance (it would not be unlike some of the break clause cases).But I do not think it would tip the balance against the factors which I have sought to identify on the Tenants' side.

2. However the Landlords sought to strengthen their argument at the outset of the hearing by adducing evidence (for which I gave

permission) to the effect that if they do not get permission in September 2002 the scheme will be fatally jeopardised. Ms Wagner, their in house surveyor produced detailed calculations designed to show that if, as it was said would be the case, a substantial part of the building had to be left unoccupied for the year Sept 2002-3 the percentage profitability of the scheme would be less than the 17% below which the Grosvenor Property board (the all important body) will not go on authorising development. This policy was confirmed in evidence by Mr Titchen, a member of that Board. This was attacked on the facts by Mr Rainey and I need to consider that first.

(i) First of all he pointed out (and there can be no doubt on the figures about this) that taking the Landlords' figures at worst they would make less profit than they would otherwise have done something like 15% as against 18% not that the scheme would make no profit of substance.

(ii) Then he drew attention to a passage in Mr Titchen's suggestion that there might be a competing project within the organisation

(iii) He then with, to my mind, some success attempted to undermine the essential figures upon which Mr Wagner's evidence was based.Thus (a) the ground rent which formed a small part of the figures would under the scheme be paid to another Grosvenor entity, but would scarcely be a loss to the Grosvenor group treated as a whole (b) the costs of selling which, no doubt for cautionary reasons, were included in the budget were most unlikely to represent reality because there was no evidence of any intention to sell. (c)The book value which was used might well be out of date and because of the decreasing income stream might well be too high. It ought not to be regarded as a fixed figure (d) base rate for the loan appeared to be above the market rate (e) the potential voids were speculative . He made other points as well but these to my mind were the most persuasive. I accept them. Their strength is of course not all the same but while I accept (as a matter of logic) that it is likely that if there is delay the profit will dip I am not persuaded that it will dip so far as to make the scheme unviable even by the group's fairly high profit requirements.

3. There is a" free standing" point to be made (and Mr Clark makes it) that there will be some loss of income through the voids occurring in the 2002-03 period .it is impossible to predict how much. I accept these are not mere "paper losses.

E CONCLUSION

Preliminary

1. Even if I was wrong about the loss of profit argument on the facts I would for my part not accept the argument that a situation where the profit may be 15% rather than 18% (and therefore one which for policy reasons the Grosvenor board would not wish to pursue) is one which frustrates/inhibits development within the meaning of the authorities. Grosvenor no doubt have excellent reasons for their own internal policy upon which I would not presume to comment

2.I would not be prepared to accept (and the cases do not support it) that *any* delay in development beyond the trivial is a frustration of development.

3.The true comparison is likely to be between the landlords obtaining the possession of the holding which they require at a date somewhat after September 2002 (because the Tenant does not lose his right to apply for a new tenancy until the Landlord establishes his ground of opposition) and a much greater likelihood of a firm date at the end of September 2003 (because of the winding up constraints on the tenants), so the true loss of time to the landlords is likely to be rather less than a year.

4. By the same token the tenants will be compelled (if the Court accedes to the landlords' submissions) to go elsewhere for rather less than a year. This can cut both ways.

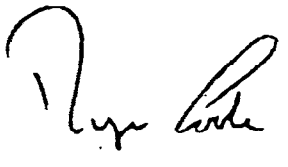
5. On the authorities the type of period sought by the tenants is at the shorter end

Striking the Balance.

1. All the factors prayed in aid by the Landlord support the contention that it would be wrong to delay the development for a substantial period . Unless there were some very compelling reason, it would be wrong and unfair to the Landlord to allow it to be delayed for three or four years.
2. But having said that , on my analysis of the Landlords' facts although the Landlords are likely to suffer some degree of loss on any delay much beyond September 2001 that loss will not be very large--indeed the period of delay may turn out to be comparatively small (see above) . I would not for my part regard such delay as being fairly stigmatised as frustrating development.

3. When one compares these factors with what I have concluded above is a reasonably strong requirement to allow the Board to remain until September 2003 , I do not think they are substantial enough to outweigh the potential hardship of the Board..
4. In passing I am bound to say that some of the Landlord's case sounds a little like pointing out the comparative ease with which various steps could be taken to oblige the landlords as opposed to considering the effect on the Board who have after all a right to a new tenancy.
5. I agree with Mr Rainey that the case of **Becker** (considered above) is of help to me. True it is there are differences. For instance in that case the landlord's scheme was far less advanced . On the other hand the period granted was far longer than is sought in this case (something like three years from when on the Court's calculation the landlords would be ready to start). The Court in that case was convinced on the evidence that Mr Becker would have difficulty in moving his specialised dental equipment for the last few years of his lease and career. I do not know what the detailed evidence was but I would not have thought that the inconveniences which I have found the Board are likely to suffer would be any less and they could well be more. In this jurisdiction of course cases tend very much to turn on their own facts but to my mind the basis problems to which **Becker** was addressed have enough similarity to those with which I am faced to lead me to think that on the whole the balance in such a case favours the tenant.

I conclude accordingly that having carried out the balancing exercise I ought to come down in favour of the tenant and I would therefore propose to say that the new tenancy should be until 30th September 2003.



His Honour Judge Roger Cooke.

24.01.02.