

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE LANDS TRIBUNAL
[2007] EWLands LCA 118 2006**

Royal Courts of Justice
Strand, London, WC2A 2LL

31/07/2008

Before :

**LORD JUSTICE BUXTON
LORD JUSTICE THOMAS
and
LORD JUSTICE STANLEY BURNTON**

Between:

GREENWEB LIMITED

**Claimant/
Respondent**

- and -

LONDON BOROUGH OF WANDSWORTH

**Compensating
Authority /
Appellant**

**David Elvin QC and Reuben Taylor (instructed by the Solicitor to the London Borough of
Wandsworth) for the Compensating Authority / Appellant
John Male QC (instructed by Lovells) for the Claimant / Respondent
Hearing date: 9 July 2008**

Lord Justice Stanley Burnton :

Introduction

1. The issue in this appeal is whether the London Borough of Wandsworth is required by the provisions of the Land Compensation Act 1961 ("the Act") to pay in compensation to the owner who served a purchase notice a sum that is more than one hundred times its market value.
2. The appeal is by the London Borough of Wandsworth against the decision of the Lands Tribunal (The President and Mr Francis) given on 17 September 2007 by which it assessed the compensation payable by the Council to Greenweb Limited, following the service of a purchase notice, pursuant to the Act, at £1.6 million.
3. The parties were agreed that the value of the land in question in the open market was £15,000. It is being used as a park, and has no subsisting planning permission for any other use, and it was unlikely that any such planning permission would be forthcoming in the future. Thus the compensation of £1.6 million bears no relationship to the actual market value of the land in

question. Greenweb is the fortunate recipient of an enormous windfall, having paid only £30,000 for the land, about one fiftieth of the compensation it will receive as a result of the Tribunal's decision.

4. The Tribunal's assessment of compensation was made on the basis that the Act compels the assumption to be made that planning permission has been granted for a Victorian terrace which was present on the land but was destroyed by enemy action during the Second World War. In other words the Tribunal assessed compensation on the basis of an assumption that planning permission existed for a development which has not been present on the land for more than 60 years.

The facts

5. The facts relevant to the decision of the Tribunal and to this appeal were sensibly and helpfully agreed between the parties.
6. In the 1880's nine three-storey dwelling houses were constructed on the site, of agreed dimensions. There was also a commercial building. They were all severely bomb-damaged during the Second World War, and as a result all of the buildings were cleared from the site at some time before 1 July 1948. On that date four prefabricated houses were present on part of the site. They had been removed by about 1978. From about 1979 the site was used as public open space. Deemed planning permission for use as public open space was granted in June 1979, and that permission was implemented. The site was sold by the London Residuary Body in 1988 and came into private ownership.
7. In April 2000, since Wandsworth were then negotiating for the purchase of the land from the owner, he applied under section 17 of the Act for a certificate of alternative development, specifying as the development dwelling houses or a day nursery or a mix of the two. In June 2000 the owner of the land made an application for planning permission for the erection of 5 2-bedroom mews houses. Wandsworth failed to determine either application, and the owner appealed. The land was purchased by Greenweb on 31 January 2001 for £30,000. In February 2001 a public inquiry was held, and on 15 May 2001 the Secretary of State, accepting the recommendations of the inspector, dismissed both appeals. The effect, as far as the section 18 appeal was concerned, was that the deemed nil certificate stood: planning permission would be granted for any development for which the land was being acquired by Wandsworth but not for any other development.
8. On 10 May 2002 Greenweb served a purchase notice on Wandsworth, who accepted it by letter dated 23 October 2002. By section 139(3)(b) of the Town and Country Planning Act 1990 Wandsworth was deemed to have served a notice to treat in respect of the land. A claim for compensation pursuant to the Land Compensation Act 1961 therefore arose.
9. Before the Tribunal it was agreed that the compensation payable to Greenweb should be assessed on one of three bases:
 - i) with an assumed planning permission for the carrying out of the rebuilding of 9 dwelling houses and one commercial building ("Basis 1");
 - ii) with an assumed planning permission for the carrying out of the rebuilding of four prefabricated houses with additional "hope value" ("Basis 2"); or
 - iii) As public open space only ("Basis 3").
10. The parties also agreed:
 - i) the amount of compensation to which Greenweb was entitled on Basis 1 was £1.6 million;

- ii) the amount of compensation to which Greenweb was entitled on Basis 2 was £1.2 million; and
 - iii) the amount of compensation to which Greenweb was entitled on Basis 3 was £15,000.
11. Lastly, it was agreed that on any of the above bases the assumed planning permission was capable of implementation.

The statutory provisions

12. The provisions determining the amount of compensation payable by an acquiring authority are in Part II of the Act. Section 5 sets out a number of general rules or principles, of which rules (1) and (2) are fundamental:

Rules for assessing compensation

5. Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

(1) No allowance shall be made on account of the acquisition being compulsory;

(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise;

.....

and the following provisions of this Part of this Act shall have effect with respect to the assessment.

13. Sections 6 to 16 contain more specific provisions, all of which are drafted in terms that appear to make their application mandatory to cases to which they apply. Section 14(1) provides:

(1) For the purpose of assessing compensation in respect of any compulsory acquisition, such one or more of the assumptions mentioned in sections fifteen and sixteen of this Act as are applicable to the relevant land or any part thereof shall (subject to subsection (3A) of this section) be made in ascertaining the value of the relevant interest.

Subsection (3A) is irrelevant for the purposes of the present case.

14. Section 15 provides:

15. (1) In a case where—

(a) the relevant interest is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for development of the relevant land or part thereof, and

(b) on the date of service of the notice to treat there is not in force planning permission for that development,

it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, such as would permit development thereof in accordance with the proposals of the acquiring authority.

(2) For the purposes of paragraph (b) of the preceding subsection, no account shall be taken of any planning permission so granted as not to enure (while the permission remains in force) for the benefit of the land and of all persons for the time being interested therein.

(3) Subject to subsection (4) of this section, it shall be assumed that, in respect of the relevant land or any part of it, planning permission would be granted—

(a) subject to the condition set out in Schedule 10 to the Town and Country Planning Act 1990, for any development of a class specified in paragraph 1 of Schedule 3 to that Act; and

(b) for any development of a class specified in paragraph 2 of Schedule 3 to that Act.

(4) Notwithstanding anything in subsection (3) of this section—

(a), (b)

(c) where, at any time before the said date, an order was made under section 51 of the said Act of 1971, in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, and compensation became payable in respect of that order under section 170 of that Act, it shall not by virtue of the said subsection (3) be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for the rebuilding of that building or the resumption of that use.

(5) Where a certificate is issued under the provisions of Part III of this Act, it shall be assumed that any planning permission which, according to the certificate, would have been] granted in respect of the relevant land or part thereof if it were not proposed to be acquired by any authority possessing compulsory purchase powers would be so granted, but, where any conditions are, in accordance with those provisions, specified in the certificate, only subject to those conditions and, if any future time is so specified, only at that time.

15. This case concerns section 15(3)(a). Paragraph 1 of Schedule 3 to the Town and Country Planning Act 1990, to which it refers, is as follows:

Development Not Ranking For Compensation under s. 114

1. The carrying out of—

(a) the rebuilding, as often as occasion may require, of any building which was in existence on 1st July 1948, or of any building which was in existence before that date but was destroyed or demolished after 7th January 1937, including the making good of war damage sustained by any such building;

(b) the rebuilding, as often as occasion may require, of any building erected after 1st July 1948 which was in existence at a material date;

(c) the carrying out for the maintenance, improvement or other alteration of any building, of works which—

(i) affect only the interior of the building, or do not materially affect the external appearance of the building, and

(ii) are works for making good war damage,

so long as the cubic content of the original building is not substantially exceeded.

“A material date” is defined by paragraph 12 of Schedule 3 as meaning either 1st July 1948 or the date by reference to which that Schedule falls to be applied in the particular case in question.

16. Section 15(4) has no bearing on the present case. Schedule 10 to the 1990 Act concerns the conditions relating to floor space applicable to rebuilding, and, I can assume, was taken into account in arriving at the agreed values under Basis 1 and Basis 2.
17. It can be seen that the facts of this case fall within paragraph 1(a): the Victorian dwelling houses were in existence before 1st July 1948 and were destroyed or demolished after 7th January 1937. The case for Greenweb is and was straightforward. An assumption mentioned in section 15 is applicable to the relevant land: the facts relating to the land satisfy the requirements of section 15(3). Section 14(1) requires that assumption to be made; and on that assumption, the value of the land is £1.6 million.
18. The case for Wandsworth is necessarily rather less straightforward. In fact, the owner of the land has no planning permission to carry out the development to which the assumed planning permission relates: the Secretary of State refused such planning permission when he dismissed the appeals to which I have referred. Apart from the right to compensation from Wandsworth, the land is worth no more than £15,000. The purpose of the provisions in Part II of the Act is to arrive at a fair market value of the land in question, apart from any value attributable to compulsory purchase. In opening Wandsworth's appeal, Mr Elvin QC disclaimed a submission that section 5(2) and section 15 are inconsistent. He submitted that it was not, and cannot have been, the intention of Parliament to require a public authority to pay for land a value bearing no relationship to its true market value. It follows that section 15(3) must be interpreted as directory rather than mandatory, so that the assumption to which it refers is displaced if it results in a value that is inconsistent with the true value of the land, and is incompatible with the principle of equivalence.
19. In support of his succinct and cogent submissions, Mr Elvin QC referred us to the well known statements of Lord Nicholls in *Director of Buildings & Lands v Shun Fung Ironworks* [1995] 2 AC 111, 125 and *Waters v Welsh Development Agency* [2004] 1 WLR 1304 at paragraph 1. In his judgment in the former case, Lord Nicholls referred to the statutory provisions relating to the determination of compensation in Hong Kong and said:

The purpose of these provisions [providing for compensation for compulsory purchase], in Hong Kong and England, is to provide fair compensation for a claimant whose land has been compulsorily taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation: a person is entitled to compensation for losses fairly attributable to the taking of his land, but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail.

20. I fully accept Mr Elvin's basic submission: Parliament could not have intended the provisions of section 14 and 15 to work as they have been held to work in this case. No possible legislative purpose has been suggested by Mr Male QC, on behalf of Greenweb, for conferring on the Respondent the windfall created by the statutory provisions if the decision of the Tribunal is correct. My difficulty, and I think Mr Elvin's, is that save in the most exceptional cases the Courts must apply what Parliament has provided in a statute, and not what the Court believes it could or should have provided; and the Tribunal, in my judgment, correctly applied what Parliament has provided.
21. Sections 14 and 15, like other provisions of Part II of the Act, contain a number of provisions expressed in mandatory terms. Thus, section 14(5) provides that certain determinations "shall be made on the following assumptions". The verb "shall" means that the making of the assumption

is mandatory. The use of the word “assumption” itself indicates that what is to be assumed may not be factual.

22. Mr Elvin accepts that the ordinary meaning of the phrase “applicable to the relevant land” in section 14(1) requires the Tribunal to determine whether facts relating to the land fall within the statutory words identifying in what cases the assumption is to be made. He accepts that on that basis the 1961 Act if literally interpreted required the Tribunal to assume that the land was subject to planning permission entitling the owner to replace the buildings destroyed during the Second World War. He accepts also that the verb “shall” in its natural meaning in section 15(3) denotes a mandatory requirement. Before the Tribunal, Wandsworth concentrated their attack on the word “applicable”, and submitted that an assumption could not be applicable if it produced a valuation divorced from the actual value of the land that infringed the principle of equivalence to which Lord Nicholls referred. Before us, Mr Elvin focused more on the authorities that in his submission showed that in certain cases the Courts may interpret “shall” as meaning “may”.
23. I do not think that there is any ambiguity in the words “applicable to the relevant land”. In relation to “shall”, Mr Elvin cited *Brayhead (Ascot) Ltd. v Berkshire County Council* [1964] 2 Q.B. 303. The issue in that case was whether a condition of a planning permission for which no reason had been stated was of no effect. The applicable statutory instrument stated that a local planning authority that granted permission subject to conditions “shall state their reasons in writing”. The Divisional Court of the Queen’s Bench Division held that a failure to state a reason did not nullify a condition. However, they reached that conclusion not by holding that the requirement of reasons was not mandatory, but by deciding that a failure to comply with the duty to give reasons did not nullify the condition. The judgment of the Court was given by Winn J:

As a matter of construction it seems clear that article 5(9)(a) requires (1) that the notice of decision be in writing; (2) the reasons be stated in writing; (3) that the notice be accompanied by a notification in the prescribed form; these requirements can be satisfied by a single document or by three physically separate documents.

Should requirement (1) not be complied with, disputes might well arise as to the calculation of the time limit for appeal to the Minister fixed by section 16 (1) of the Act; should requirement (3) not be satisfied an applicant might be left in ignorance of his rights. Each of those requirements is therefore essential to the statutory purposes. The interposition of requirement (2) militates strongly against any view that it can be regarded as merely directory; all three requirements appear to be mandatory. It does not follow necessarily that non-compliance with any one of them will render the notice null in law, still less that the decision of which notice purports to be given is itself of no legal effect. The court is not concerned in the instant case with any non-compliance with requirement (1) or requirement (3): the effect of non-compliance with requirement (2) must be decided.

No doubt such a non-compliance may be and often will be inconvenient for an applicant; he may find it necessary to give notice of appeal to the Minister before he knows the strength or weakness of the case which he will have to meet. However, he could undoubtedly demand, as of right, a statement of reasons and by threat or effect of an order of mandamus secure them, and it would be strange if the Minister did not adjourn his appeal until the reasons had been delivered and considered. In the sense that there is a duty to state the reason in writing requirement (2) is undoubtedly mandatory. Comparison may be made of the provisions of section 12 of the Tribunal and Enquiries Act, 1958, requiring that reasons, if requested, be stated, in general, for a decision: a non-compliance with those provisions would certainly found a mandamus.

It is another matter whether the notice of condition in the present case, or such a tribunal decision is rendered null by a failure to state reasons in writing: notwithstanding the obiter dicta of Salmon J. this extreme result is not required for the effective achievement of the purposes of the statute nor intended, as a matter of construction, by Parliament.

Thus this case is not authority for the proposition that “shall” does not impose a duty.

24. Mr Elvin also relied upon the decision of the House of Lords in *Attorney-General v Parsons* [1956] A.C. 421. The issue was whether the phrase “shall be forfeited” in s. 1(1) of the Mortmain and Charitable Uses Act 1888 meant that forfeiture would automatically result from the failure to obtain a licence –

(1) Land shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain, otherwise than under the authority of a licence from Her Majesty the Queen, or of a statute for the time being in force, and if any land is so assured otherwise than as aforesaid the land shall be forfeited to Her Majesty from the date of the assurance, and Her Majesty may enter on and hold the land accordingly...”

The House of Lords by a majority held that the provisions were not mandatory or automatic in their effect and were equivalent to an option to forfeit. But they did so not by construing “shall” as meaning “may”, but by construing “forfeit” as meaning “liable to be forfeited”. They did so in part because the more literal construction of the words would work an unintended alteration in the law, and in part because the words “shall be forfeited” had to be read with “and Her Majesty may enter on and hold the land accordingly”, which suggested an option that would be inconsistent with automatic forfeiture. Thus Lord Cohen said, at 457-8.

The case made by counsel for the respondents on this point also is simple. He admits that the word “forfeited” is capable of meaning “liable to be forfeited,” but he says that its primary meaning connotes immediate forfeiture. He points out that that is the meaning which the word must bear in paragraph (iv) of subsection (2) of section 1 of the 1888 Act. He submits that a different meaning should not be attributed to it in subsection (1) from that which it must bear in subsection (2).

Despite its attractive simplicity, I am unable to accept this argument. If it were accepted, little effect can be given to the words at the end of subsection (1) “and Her Majesty may enter on and hold the land accordingly.” It was suggested that these words were inserted to make it clear that Her Majesty was entitled to enter before the period of the option given to mesne lords by subsection (2) had expired. I doubt if that was the purpose of these words, and it seems to me that the words are far more appropriate if in subsection (1) “forfeited” is read as meaning “liable to be forfeited.” Moreover, the respondents’ construction connotes that if a mesne lord exercises his right of entry, the title will pass to him not from the person who has executed the offending assurance but from Her Majesty, whereas paragraph (iv) of subsection (2) provides that the land shall be forfeited to the mesne lord from the date of that assurance instead of to Her Majesty.

If the respondents’ contentions on this point were well founded, a radical change would indeed have been effected by the 1888 Act, for it is admitted that under the law in force before that Act was passed the forfeiture did not become effective until Her Majesty took steps to enforce it. I am unable to accept the view that if Parliament had intended such a radical alteration, it would have effected it by such ambiguous language. I would add that if the respondents’ argument were well founded, the effect of the alteration would be to enable a tenant who wished to escape his obligations to do so by transferring them to Her Majesty against her will.

25. In contrast to the statutory provisions considered in *Attorney-General v Parsons*, in the present case there is no ambiguity, there is no contextual support for anything other than a mandatory provision, and, as will be seen, the background to and history of the 1961 Act do not support Mr Elvin’s submissions.
26. The judgment of the Court of Appeal in *Re Turner’s Will Trusts* [1937] Ch. 15 is the most helpful from Wandsworth’s point of view. The Court declined to construe section 31(1)(ii) of the Trustee Act 1925 as imposing an absolute duty on a trustee to pay income of trust property which was in conflict with the directory provisions of the trust deed. The provision in question was:

Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property –

... (ii.) If such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property to him, until he either attains a vested interest therein or dies, or until failure of his interest:

27. The Court noted that the 1925 Act merely consolidated reforms of two previous statutes. Romer L.J. said, at 26:

These two Acts had served their purpose, which was to make such amendments in the various branches of law dealt with in the 1925 Acts as the Legislature considered ought to be made with a view to its consolidation, and to permit of the Acts of 1925 being merely consolidating statutes. In these circumstances it is incredible that by the Trustee Act, 1925, the Legislature intended to change the law still further and in so radical a respect as to make the provisions of cl. (ii.) of s. 31, sub-s. 1, override the provisions of the instrument creating the trust.

The statutory provision in question was in part of the Act providing for trustees' powers, and the Court construed it as setting out a power rather than a duty. Thus both context and history militated against a literal interpretation.

28. The authoritative statement of the circumstances in which the Court may depart from a clear and unambiguous meaning when construing a statute is to be found in *Stock v Frank Jones (Tipton) Ltd* [1978] 1 WLR 231. Viscount Dilhorne, with whom the other members of the Appellate Committee agreed, said, at 234-5:

It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it "according to the intent of them that made it" (Coke 4 Inst. 330).

If it were the case that it appeared that an Act might have been better drafted, or that amendment to it might be less productive of anomalies, it is not open to the court to remedy the defect. That must be left to the Legislature.

The appellants contend that in view of the anomalies which they say would result from the interpretation the respondent seeks to have placed on the paragraph, to have paragraph 8 (2) read as if it said: "who also took part and at the date of the dismissal were taking part in that action." As Stephenson L.J. said in the Court of Appeal, the paragraph does not so provide.

"It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do" said Lord Mersey in *Thompson v Goold & Co.* [1910] A.C. 409, 420. "... we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself" Said Lord Loreburn L.C. in *Vickers, Sons & Maxim Ltd. v Evans* [1910] A.C. 444, 445.

....

The existence of anomalies, if they exist, cannot limit the meaning to be attached to clear language in a statute.

29. The last sentence of this citation is particularly pertinent. Lord Simon of Glaisdale was equally clear. He said, at 237:

... a court would only be justified in departing from the plain words of the statute were it satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and

the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly.

30. In my judgment, the conditions set out by Lord Simon are not met in the present case. The most obviously absent is the last. Lord Scarman said, at 238:

... Mr. Yorke for the appellants sought to give the words a meaning other than their plain meaning by drawing attention to what he called the “anomalies” which would result from giving effect to the words used by Parliament. If the words used be plain, this is, I think, an illegitimate method of statutory interpretation unless it can be demonstrated that the anomalies are such that they produce an absurdity which Parliament could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat.

It is not enough that the words, though clear, lead to a “manifest absurdity”: *per* Lord Esher M.R. in *Reg. v Judge of the City of London Court* [1892] 1 Q.B. 273, 290. Lord Atkinson put the point starkly in *Vacher & Sons Ltd. v London Society of Compositors* [1913] A.C. 107, 121:

“If the language of a statute be plain, admitting of only one meaning, the legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results.”

The reason for the rule was given by Lord Tenterden C.J. in *Brandling v Barrington* (1827) 6 B & C 467, 475 in a passage in which he was considering the so-called “equity of a statute”: he commented

“that it is much safer and better to rely on and abide by the plain words, although the legislature might possibly have provided for other cases had their attention been directed to them.”

As Lord Moulton said in *Vacher’s case* [1913] A.C. 107, 130:

“The argument *ab inconvenienti* is one which requires to be used with great caution. There is a danger that it may degrade into mere judicial criticism of the propriety of the acts of the legislature.”

If the words used by Parliament are plain, there is no room for the “anomalies” test, unless the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake. If words “have been inadvertently used,” it is legitimate for the court to substitute what is apt to avoid the intention of the legislature being defeated: *per* MacKinnon L.J. in *Sutherland Publishing Co. Ltd. v Caxton Publishing Co. Ltd.* [1938] Ch. 174, 201. This is an acceptable exception to the general rule that plain language excludes a consideration of anomalies, i.e. mischievous or absurd consequences. If a study of the statute as a whole leads inexorably to the conclusion that Parliament has erred in its choice of words, e.g. used “and” when “or” was clearly intended, the courts can, and must, eliminate the error by interpretation. But mere “manifest absurdity” is not enough: it must be an error (of commission or omission) which in its context defeats the intention of the Act.

31. Again, in my judgment the consequences of the application of the clear statutory words in the present case are not so absurd that one can see that Parliament must have made a drafting mistake. As has been seen, section 15 contains the phrase “it shall be assumed that” in a number of places. So does section 16. Section 14 also sets out a number of apparently mandatory requirements, such as that in subsection (5). These mandatory directions must have been given by Parliament quite deliberately. Furthermore, if section 15(3) is to be read as merely directory, in accordance with normal rules of statutory interpretation so must the same words elsewhere. This would defeat, not carry out, the legislative intention as expressed in the Act.

32. In my judgment there is no ambiguity in the word “shall”, or in the phrase “it shall be assumed that ...” The assumption is mandatory. The phrase does not and cannot mean “it may be assumed that”. Moreover, if it could be read as “may”, one would have to read into the section the criteria or guidance to enable the compensating authority or the Tribunal to know when it is, and when it is not, to make the assumption in question. That would be to add to the statute words that are not there. It would be to legislate, not to interpret. Moreover, if the assumption is only to be made when it is supported by the facts, it ceases to be an assumption, and the express provision becomes otiose.
33. Section 14(2) refers to a planning permission “which is to be assumed in accordance with any of the provisions” of sections 15 and 16. If section 15(3) is to be read as permissive rather than mandatory, either that wording is inappropriate (because it has to be read as “Any planning permission which is to be *or may be* assumed ...”) or it cannot be read as referring to the assumption referred to in that subsection. To my mind, the drafting of section 14(2) simply confirms that Parliament intended all of the assumptions to which it refers to be mandatory. The express exclusion of section 15 in section 14(3A)(b) also indicates that Parliament intended the section 15 assumptions to be mandatory.
34. The Tribunal’s judgment includes a comprehensive review of the history of what is now section 15(3)(a) of the Act. In my judgment, it would be unfortunate if those seeking to apply the clear words of Part II of the Act had to research its history in order correctly to construe and to apply it, and it is unnecessary for them to do so. The citizen should be able to understand the law as it is now enacted. For this reason, and because the accuracy of the Tribunal’s historical account is accepted by both sides and is publicly available on the Lands Tribunal website at <http://www.landtribunal.gov.uk> and on the BAILII website at <http://www.bailii.org>, I do not propose to set it out in this judgment. It is sufficient to note two matters. First, as the Tribunal pointed out at paragraph 14 of its decision, the purpose of the statutory provisions (contained in the Town and Country Planning Act 1947) from which the applicable provisions of the 1961 Act are descended was to exclude from nationalisation and to allow the owner to retain the development value of land to which the Third Schedule applied. The mandatory provisions were appropriate for that purpose. There has been no relevant change in the wording of the statutory provisions in question. Secondly, until 1988 the assumption required by section 15(3) of the 1961 Act was generally realistic, because General Development Orders gave permission for the rebuilding of war damaged buildings. That permission was not included in the 1988 Order. Thus, when it was passed, the 1961 Act would not have been regarded as creating an anomaly such that a departure from its clear words could have been justified. The meaning of the Act could not be changed by the change in the General Development Order.
35. Lastly, an assumed planning permission will only have a material affect on the value of land if it is capable of being implemented. The great majority of sites to which Paragraph 1 of Schedule 3 to the Town and Country Planning Act 1990 might apply (i.e. on which there was a “building which was in existence on 1st July 1948, or ... any building which was in existence before that date but was destroyed or demolished after 7th January 1937”), including war damaged buildings, have already been rebuilt. There must be very few sites on which there were buildings on or between 7th January 1937 and 1st July 1948 that are open spaces and on which there are no tree preservation orders or other restrictions preventing redevelopment. The number of anomalies created by the statutory provisions to which this appeal relates must therefore be small. Unfortunately for Wandsworth, this case concerns one of them. This factor too militates against a forced construction of those provisions.
36. For these reasons, in my judgment this appeal must be dismissed. This is a conclusion I feel compelled to reach, and I do so most reluctantly, as I hope the opening paragraphs of my judgment indicate. I respectfully endorse the recommendation of the Law Commission in its Final Report on Compensation for Compulsory Purchase, Law Com No. 286, at paragraph 8.39, that section 15(3) and (4) of the 1961 Act should be repealed without replacement.

Lord Justice Thomas:

37. I agree. The conclusion is inevitable given the wording of the Act. It is, however, for reasons given by Buxton LJ and Stanley Burnton LJ, a highly regrettable conclusion for the tax payers of the London Borough of Wandsworth. Those taxpayers, not, it seems, the Government in Whitehall, must now fund a payment of over 100 times the value of the land under legislation which should have been amended through the initiative of the relevant Department in Whitehall in accordance with the recommendations of the Law Commission and the observations of Lord Oliver to which Buxton LJ has referred. I too would hope that Parliamentary time could be found to effect an amendment at the earliest possible opportunity; any business case or cost benefit analysis would demonstrate that a very small amount of Parliamentary time and a very small cost in civil service time in the Department (which should have acted long ago) was all that was needed to avoid the risk that tax payers of other municipalities would have to fund windfall gains to developers which cannot, on any rational basis, be justified.

Lord Justice Buxton:

38. Like my Lord, I see no escape from the conclusion that he has reached. Like him, I find that outcome utterly deplorable.
39. The only sensible explanation for requiring the making of assumptions as to planning permission such as are collected in sections 14-16 of the Act is to ensure that persons whose land is purchased do not suffer by receiving compensation less than the potential but as yet unlocked value that the land would have once the relevant planning permission was granted. They cannot have been intended to increase the compensation over and above the value, actual or potential, that the land had before the compulsory purchase process was initiated: as is the effect of provisions relied on in the factual circumstances of the present case. But unfortunately Parliament has not stated that as the purpose of the sections, no doubt because it never occurred to anyone that it was necessary to do so. That being the case, we are obliged to apply the wording that Parliament has adopted, without adjusting it to an unspoken premise: with the result that the Tribunal and my Lord have so clearly demonstrated.
40. The recommendation of the Law Commission referred to by my Lord in his §36 might on one view have been seen as something of a tidying-up provision. The Law Commission was not faced with, and did not set out, the possibly dire consequences of this legislation, which are demonstrated in practice in this case. That may be why the recommendation has not been acted on. But another very weighty authority has also urged the review of these provisions. In *Colley v Canterbury City Council (No 2)* [1993] AC 401, where the provisions as to rebuilding did have practical effect, albeit in a different sense from that of the present case, Lord Oliver, speaking at p 409C for a unanimous House of Lords, described the provisions as an anachronistic relic, and urged their reconsideration. That was fifteen years ago. Lord Oliver's call has not been heeded. This case shows that it must be heeded now. If the government is not prepared to act of its own motion, local authorities, who are faced with the unmeritorious deprivation of very scarce funds that occurred in this case, must exert political pressure to achieve the correction of the anomaly.