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Neutral Citation: [2024] EWCC 4

Case No: HO7MA571

IN THE COUNTY COURT AT NEWCASTLE
BUSINESS AND PROPERTY WORK

Newcastle Civil & Family Courts and Tribunals Centre
Barras Bridge
Newcastle upon Tyne
NE1 8QF

Date: 09/08/2024

Before :

HH JUDGE DAVIS-WHITE KC

- -

Between :

KWIK-FIT PROPERTIES LIMITED	**Claimant**
- and -	
RESHAM LIMITED	**Defendant**

- -
- -

Mr Bruce Walker (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimant**
Mr Stephen Fletcher (instructed by Setfords Law Limited) for the **Defendant**

Hearing dates: 4-8 March; 19 April 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 9 August 2024 by circulation to the parties or their representatives by e-mail and making it available to the public.

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HH JUDGE DAVIS-WHITE KC

HH Judge Davis-White KC :

Introduction

1. This case concerns an unopposed business lease renewal claim brought by the tenant and claimant, Kwik-Fit Properties Limited ("Kwik-Fit"), against the landlord, Resham Limited ("Resham"), pursuant to Part II of the Landlord and Tenant Act 1954 ("LTA 1954").

2. It is agreed that a new lease should be granted. The dispute this judgment deals with is as to three terms of the same. The disputed terms in question concern whether there should be a tenant's break clause (and if so, the frequency), the amount of the tenant's contribution to maintenance etc. of an access way, and the quantum of the rent.

3. The claim concerns premises, being land and buildings, on the west side of Northumberland Way, Hertburn, Washington, Tyne & Wear (the "Premises").

4. The tenant, Kwik-Fit, occupies the Premises for its business purposes of offering car repair and fitting services. Among the services offered are tyre, exhaust and brake repairs and fitting, MOT testing and car servicing. The relevant user clause under the existing lease dated 9 April 1996 is:

> *"12.21.1 Not to use the Demised Premises otherwise than as a Motorists Centre and for the sale supply storage and fitting of tyres exhausts batteries shock absorbers brakes clutches radiators oil filters and steering parts together with any other motorist components or such other uses as the Landlord shall approve such consent not to be unreasonably withheld or delayed"*

The Premises

5. The Premises are situated on an out of town purpose designed industrial estate. They are approached from the public highway by a private road (the "Access Road") but can be seen from various other roads.

6. The Premises comprise a self-contained, fenced site of about 0.6 acre with tarmacked and grassed areas and marked out parking areas and a building. The following physical description is agreed between the experts.

7. The building is of steel frame construction with brick elevations, clad at a higher level with single skin profile steel sheeting, under a pitched uninsulated roof with profile steel cladding incorporating translucent roof lights. Vehicular access to the building is by way of 3 double-width roller shutter doors (6.2 m width) and a single-width roller shutter door (3m wide) giving access to some 7 car maintenance bays (including vehicle ramps). The height access is 3m.

8. The average internal width of the building is 108ft 2 inches (32.99m), the average depth is 43ft (13.1m) and the agreed gross internal area is 4,652 sq.ft. (432.18 sq m).

9. At the southern end of the building there is an air conditioned office/reception area with double glazed entrance doors. To the rear of the office is a disabled access WC and to the rear of that with access from the workshop area is a small works office, staff room and separate staff WC.

10. The building is situated on a large self-contained site with a total of 19 marked car spaces, circulation space and an area to the rear of the building which is currently laid to grass. The whole site is fenced with a barrier gate providing access to the shared access road leading onto Industrial Road close to its junction with the A1290.

11. The building was purpose built for Kwik-Fit in about late 1995/early 1996. It has been described by Kwik-Fit's expert as being one of the "more modern units" run by Kwik-Fit. The industrial estate on which it is situated was created in the 1960s but appears to have buildings on it which look fairly modern and, as said, the subject Premises were built in the mid 1990s.

12. Prior to the grant of the lease that I shall refer to, the prospective parties to the lease entered into an Agreement for a Lease dated 13 October 1995. That agreement, among other things, provided for relevant building works to be undertaken by the prospective tenant.

13. The Premises are most conveniently described as forming part (the eastern part) of a parcel of land roughly rectangular in shape, which is bounded to the west by Industrial Road (a road running through Hertburn Industrial Estate), to the north by Vermont Road (the A1290) and to the east by Northumberland Way (the A195). Where Vermont Road meets Northumberland Way there is a roundabout (the "Vermont Roundabout"). The Access Road runs from Industrial Road and forms the southern boundary to the rectangular parcel of land (though it stops short of the edge of the parcel where the parcel meets the edge of Northumberland Road). The longer sides of the rectangle are the north and south sides. Within the rectangle, the Premises occupy the east side, being bounded at the south west corner by the Access Road and the Vermont Roundabout being outside its north eastern corner.

14. Immediately to the west of the Premises, forming the western part of the rectangle that I have identified, and also lying north of the Access Way there are further premises, currently being used as a car wash and currently operated by the IMO Nationwide car wash company.

15. Just under two miles north of the Vermont Roundabout, Northumberland Way, the A195, meets the Follingsby Interchange with the A194(M). Just under one half a mile south of the Vermont Roundabout, Northumberland Way meets the Northumberland Way interchange with the A1231. From that interchange running roughly due west, the A1231 runs towards the A1 approximately 2.5 miles away. Taking Northumberland Way to run approximately north/south, it can be pictured as forming one side of a roughly right angled triangle, with the A1231 forming its shortest side (at the bottom) and the A194(M) the hypotenuse running from north to south west. The south west corner of the triangle is, very roughly, where there is access to the A1.

16. The estimated annual average daily traffic flow on the relevant part of the main A-road, the A195, Northumberland Way, stands at around 16,000 vehicles per day, that on the A1290 (to the North of the Premises) about 9,000 vehicles per day.

17. There was much debate before me as to whether the site was or was not visually "prominent". However, such a description was only really relevant when comparing the site with other sites for the purposes of considering comparables. I was shown a large number of photographs and heard evidence from the experts as to their opinion.

It seems to me fairly clear that the site is fairly prominent and fairly obvious when travelling North/South (or vice versa) on Industrial Road or East/West (or vice versa) on the road on its Northern boundary (even if there are areas where visibility is obscured). However, the site is not really visible at all from Northumberland Way, on its eastern boundary, when travelling North/South or vice versa. It is obscured by trees and/or hedging.

18. Washington is a new town built in the 1960s. Central Gateshead lies approximately 6 miles north west of the Premises (by road, or 5 miles as the bird flies), with Newcastle upon Tyne a short way away from Gateshead on the other side of the River Tyne (8 miles from Washington). Sunderland lies just under 7 miles away by road and is almost due east. Durham is about 14 miles to the South.

19. As regards Washington itself, the Nissan automotive plant is a major employer on the eastern outskirts. There is the new International Advanced Manufacturing Park to the north of the Nissan Plant (intended to create over 7,000 jobs) and the Hillthorn Business Park, being marketed as the North East's biggest speculative industrial development, only 1 mile to the east of the Premises.

20. In evidence there are a number of photographs of the site taken from a number of angles and heights (including aerial photographs).

The current lease

21. Kwik-Fit has been a tenant of the Premises pursuant to a 25 year term lease (with no break clause) dated 9 April 1996 (the "1996 Lease"). The 1996 Lease was granted by Wallis Roadside Developments Limited ("Wallis"). The parties to the 1996 Lease are Wallis, Kwik-Fit and, as guarantor, Kwik-Fit Holdings plc. Title to the lease is registered at HM Land Registry under title no. TY334309.

22. The term of years under the 1996 Lease expired on 8 April 2021 but the 1996 Lease continued thereafter under s24(1) LTA 1954.

23. The commencing rent under the 1996 Lease (leaving aside a peppercorn rent applying for about 6 days) was £35,000 per annum, payable by equal quarterly instalments in advance. There are provisions in clause 6 of the 1996 Lease for upward (only) rent reviews every five years. In fact no rent reviews have been implemented and the rent throughout has remained at £35,000 per annum.

24. Resham was registered at HM Land Registry as the freehold owner of the Premises on 17 July 2001 with title no. TY322043.

The renewal procedure

25. Kwik-Fit served a tenant's notice dated 10 February 2021, pursuant to s26 LTA 1954, requesting a new tenancy as from 10 November 2021. No landlord's counter notice, opposing the grant of a new tenancy was served.

26. Kwik-Fit issued its Part 8 Claim form on 29 October 2021. The proceedings were issued in Manchester. They were later transferred to Brentford. In April 2022 they were transferred to Gateshead. They were later still transferred to Newcastle.

The Parties, legal representation and evidence

27. Kwik-Fit is a well-known multiple outlet fast-fit business with about 750 sites nationwide. Indeed, it has two sites in Gateshead (the nearest one being some 6 miles or so away by road from the Premises); one at Chester-Le- Street (some 6 miles or so by road South from the Premises) and two in Sunderland.

28. Kwik-Fit is part of what was referred to as the "ETEL group" of companies. This is because the intermediate holding company in the group is, as I understand it, European Tyre Enterprise Limited ("ETEL"). The ultimate holding company is Itochu Corporation via its subsidiary, Itochu Treasury Centre Europe plc. In what follows I have for convenience referred to the ETEL group as the "Kwik-Fit group", identifying the immediate group of which Kwik-Fit forms a part.

29. Kwik-Fit was represented before me by Mr Bruce Walker of Counsel, instructed by Eversheds Sutherland (International) LLP who have acted for Kwik-Fit throughout.

30. The evidence put before the Court by Kwik-Fit comprised a number of witness statements by Mr Andrew Brodie and a number of expert reports of Mr Richard Hardy.

31. Mr Brodie is employed by ETEL as a Regional Estates Manager within its Group Property Department.

32. Mr Hardy is a member of the Royal Institution of Chartered Surveyors and a Partner in the firm of Gerald Eve LLP. He has been with Gerald Eve since November 2010. Prior to that he was with Carter Jonas for 17 years. He has over 33 years' experience of practice within the commercial surveying industry. He currently operates out of Gerald Eve's Leeds office with an allocated geographical operating area of Newcastle area in the north, Leeds to the West and the east coast to the east including north east Lincolnshire.

33. Both Mr Brodie and Mr Hardy were cross-examined.

34. Resham is a small/medium enterprise. As I understand it, the company is a property investment company. It is owned by members of the Mander family of which four are directors, including Mr (or more accurately, Dr) Davinder Singh Mander who gave evidence before me. Its unaudited abridged accounts for the year ended 31 March 2023 include a balance sheet showing net assets of over £12.2 million, including stock, which I understand to represent investment properties, of over £17 million.

35. Resham acted in person for much of the time that the current proceedings were on foot. However, it more recently instructed Setfords solicitors, who filed notice of acting on 27 February 2024, and who themselves instructed Mr Stephen Fletcher of Counsel, shortly before the trial, to act as the trial advocate.

36. The factual evidence for Resham came from Mr Mander. Much of his written evidence was taken up with diatribes against Kwik-Fit and its conduct of the proceedings, often in language that was difficult to follow. Typical examples follow:

(1) The Claimant's proposal [set out in its s26 notice] "seems a sequester with a defendant subsidy to an essential retail service" (paragraph 6 of witness statement)

(2) "Despite unopposed renewal the Claimant issued proceedings..to subvert its original entitled lease terms…The claim issuance was levelled at the Defendant despite commercial tenant practice" (paragraph 7 of witness statement)

(3) Kwik-Fit's proposals were "inequitable" (paragraph 8 of witness statement).

(4) Kwik-Fit is "well resourced and versed in stratagems. These encompass prevarication and procrastination for disproportionate Judicial process with misrepresented facile open correspondence on subversive without prejudice content. A pattern of argument, accusation and diversion or deferral by a triad of claimant, its surveyor and solicitors is at large" (paragraph 9 of witness statement).

(5) In his witness statement from paragraphs 12 to 14, Mr Mander attacks the claimant, its expert surveyor ("approach is best described as unprofessional at best and borders on arrogant") and its solicitors (their conduct is characterised as "frank hustle and hassle to wrongfoot the defendant for the last 18 months").

37. Mr Fletcher, in my judgment rightly, did not rely upon any conduct issues as set out by Mr Mander as affecting the issues that I have to determine though, if made out, they might be capable of being relevant as to costs at the end of the day. For present purposes I need consider them no further.

38. For completeness I should also add that Kwik-Fit has its own criticisms of Mr Mander's conduct of the proceedings. Its submission is that such conduct has caused the costs of these proceedings to become disproportionate. In my judgment again correctly, Mr Walker did not enlarge upon such matters as having any relevance to the issues that this judgment deals with.

39. As well as the evidence of Dr Mander, Resham relied upon a number of expert reports of Mr Paul Richard Knight Bloomfield ("Mr Bloomfield"). Mr Bloomfield is also a member of the Royal Institution of Chartered Surveyors. He holds a BA (Hons) degree in town planning.

40. Mr Bloomfield joined the firm of Farr Bedford, Chartered Surveyors, based in Ealing, London W5 in about 1982. He then joined the firm of Golding James practising at Kingston-upon-Thames, Surrey in June 1990. He continued in the successor firm, Golding James Limited. He was first based in the same physical offices at Kingston-upon-Thames as he had been when with Golding Baker and later moved to Shere, nr Guildford. From 1 December 2023 he became a director of Golding James Bloomfield Limited based at Windlesham, Nr Guildford.

41. Both Dr Mander and Mr Bloomfield were subjected to cross-examination.

42. I am grateful for the legal teams, and especially Counsel, on both sides for their assistance in this case.

The Issues

43. Over time the issues that arose as regards the terms of the new lease to be granted to Kwik-Fit have narrowed down. By the time of the trial, there remained four issues to be determined:

    (1) Issue 1: Should there be a change in the terms of the new lease compared with the 1996 Lease, so that as well as the agreed term to be granted of 15 years, there should be tenant-only break clause exercisable every 5 years?

    (2) Issue 2: Should a clause regarding the tenant's obligation to contribute to the costs of repair and maintenance of the Access Road be changed compared with the 1996 Lease, so that they are capped at one-third of the full costs?

    (3) Issue 3: should certain minor terms of the proposed new lease be altered, as compared with the 1996 Lease?

    (4) Issue 4: what rent should be set under the proposed new Lease?

44. As regards Issue 3: I was told by Counsel that whether or not the proposed changes to the 1996 Lease terms proposed by Kwik-Fit with regard to three minor matters were made or not did not alter the parties' respective cases as to the appropriate rent and, in effect, that resolution of the issues one way or the other would have no effect on the rent to be payable under the proposed new lease. I was also informed that Counsel considered that they should be able to reach agreement on the small number of remaining points that arose. Accordingly, and on the basis that of the parties' agreement to the resolution of Issue 3 having no impact on rent, I decided to leave that matter over until after this judgment. I do not address the matter further in this judgment.

45. As regards Issues 1 and 2 on the one hand and Issue 4 on the other, the LTA 1954 requires the court to take a different approach in determining the relevant terms of the proposed new lease that should be included in it and the issue of the rent.

46. As regards the terms of the proposed lease other than rent, the court is given a wide discretion by s35 LTA 1954. The court, in exercising that discretion is required to "*have regard to the terms of the current tenancy and to all relevant circumstances."*

47. As regards rent, the Court is required by s34 LTA 1954 to fix the rent at that which "*having regard to the terms of the tenancy (other than that relating to rent) the holding might reasonably be expected to be let in the open market by a willing lessor*". However, in carrying out the exercise of determining an open market rent the court is enjoined to disregard a number of factors or matters, which I shall come on to explain.

Issues 1 and 2: s35 LTA general

48. Section 35 LTA 1954 provides as follows:

    "35. Other terms of new tenancy.

> *(1) The terms of a tenancy granted by order of the court under this Part of this Act (other than terms as to the duration thereof and as to the rent payable thereunder) , including, where different persons own interests which fulfil the conditions specified in section 44(1) of this Act in different parts of it, terms as to the apportionment of the rent, shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the court; and in determining those terms the court shall have regard to the terms of the current tenancy and to all relevant circumstances.*
> *(2) In subsection (1) of this section the reference to all relevant circumstances includes (without prejudice to the generality of that reference) a reference to the operation of the provisions of the Landlord and Tenant (Covenants) Act 1995."*

49. The leading case is *O'May v City of London Real Property Ltd* [1983] 2 AC 726. I was also referred to Reynolds & Clark on Renewal of Business Leases (6th Edn) ("Reynolds & Clark"), Chapter 8 paragraph 8-046 et seq.

50. In *O'May* Lord Hailsham said at page 740D-F:

> "*From* [Sections 34 & 35 LTA 1954] *...I deduce three general propositions. (1) It is clear from section 34 that, in contrast to the enactments relating to residential property, Parliament did not intend, apart from certain limitations to protect the tenant from the operation of market forces in the determination of rent. (2) In contrast to the determination of rent, it is the court and not the market forces which, with one vital qualification, has an almost complete discretion as to the other terms of the tenancy (which, of course in turn must exercise a decisive influence on the market rent to be ascertained under section 34). And (3) in deciding the terms of the new tenancy, as to which its discretion is otherwise not expressly fettered, the court must start by " having regard to" the terms of the current tenancy, which ex hypothesi must either have been originally the subject of agreement between the parties, or themselves the result of a previous determination by the court in earlier proceedings for renewal."*

51. He went on to consider further the concept of "having regard to" the terms of the current tenancy (at 740F-741E):

> "*A certain amount of discussion took place in argument as to the meaning of " having regard to " in section 35. Despite the fact that the phrase has only just been used by the draftsman of section 34 in an almost mandatory sense, I do not in any way suggest that the court is intended, or should in any way attempt to bind the parties to the terms of the current tenancy in any permanent form. But I do believe that the court must begin by considering the terms of the current tenancy, that the burden of persuading the court to impose a change in those terms against the will of either party must rest on the party proposing the change, and that the change proposed must, in the circumstances of the case, be fair and reasonable, and should take into account, amongst other things, the comparatively weak negotiating position of a sitting tenant requiring renewal, particularly in conditions of scarcity, and the general purpose of the Act which is to protect the business interests of the tenant so far as they are affected by the approaching termination of the current lease, in particular as regards his security of tenure. I derive this view from the structure, purpose, and words of the Act itself.* …[Having referred to various judgments as also confining this point]

> *The point is also emphasised by the decision in Charles Clements (London) Ltd. v. Rank City Wall Ltd (1978) 246 E.G. 739, where the court rejected an attempt by the landlord as a means of raising the rent to force on a tenant a relaxation of a covenant limiting user which would have been of no value to the particular tenant, and Aldwych Club Ltd. v. Copthall Property Co. Ltd. (1962) 185 E.G. 219 where the court rejected an attempt by the tenant to narrow the permitted user with a view to reducing the rent. A further point which was canvassed in argument, and with which I agree, is that the discretion of the court to accept or reject terms not in the current lease is not limited to the security of tenure of the tenant even in the extended sense referred to by Denning L.J. in Gold v. Brighton Corporation [1956] 1 W.L.R. 1291. There must, in my view, be a good reason based in the absence of agreement on essential fairness for the court to impose a new term not in the current lease by either party on the other against his will. Any other conclusion would in my view be inconsistent with the terms of the section. But, subject to this, the discretion of the court is of the widest possible kind, having regard to the almost infinitely varying circumstances of individual leases, properties, businesses and parties involved in business tenancies all over the country*."

52. Lord Wilberforce said the following at page 747:

> "*The crucial section, for present purposes, is section 35 which relates to the terms of the tenancy. other than terms as to duration and rent. This section contains a mandatory guideline or direction to "have regard to" the terms of the current tenancy and to all relevant circumstances. The words "have regard to" are elastic: they compel something between an obligation to reproduce existing terms and an unfettered right to substitute others. They impose an onus upon a party seeking to introduce new, or substituted, or modified terms, to justify the change, with reasons appearing sufficient to the court (see Gold v. Brighton Corporation [1956] 1 W.L.R. 1291, 1294—on "strong and cogent evidence" per Denning L.J., Cardshops Ltd. v. Davies [1971] 1 W.L.R. 591, 596 per Widgery L.J.).*
>
> *If such reasons are shown, then the court, applying the words "all relevant circumstances," may consider giving effect to them: there is certainly no intention shown to freeze, or in the metaphor used by learned counsel, to "petrify" the terms of the lease. In some cases, especially where the lease is an old one, many of its terms may be out of date, or unsuitable in relation to the new term to be granted. If so or for other good reasons shown, the court has power to order a modification by changing an existing term or introducing a new one (e.g. a break clause, cf. Adams v. Green (1978) 247 E.G. 49). Before doing so it will consider any objections by the tenant, and where there is an insoluble conflict, will decide according to fairness and justice."*

53. The speeches of Lords Hailsham and Wilberforce were agreed with by the remaining three Law Lords sitting on the case (Lords Keith, Scarman and Brandon).

54. I therefore agree with the summary put forward by Mr Walker which, slightly amended, is as below:

(1) The Court must first consider the terms of the existing tenancy;

(2) The burden of persuading the court to impose a change rests on the person proposing the change;

(3) The change must be fair and reasonable;

(4) There must be a good reason, based on fairness, to impose the proposed new term;

(5) Otherwise the discretion is wide;

(6) The LTA 1954 is not intended to "petrify" the terms of the existing tenancy: in some cases, especially where the lease is an old one, the existing term sought to be substituted may be out of date or unsuitable.

55. There is, however, an important further point. Any submission that a change in a term will be fair because there will be a resulting alteration in the (market) rent agreed or determined pursuant to s34 LTA 1954, has to be treated with caution.

56. First, the term may be changed specifically with a view to having an impact on the rent rather than the change itself being of any other specific benefit to the party proposing a change in term (see e.g. the cases of *Charles Clements (London) Ltd. v. Rank City Wall Ltd* (1978) 246 E.G. 739 and *Aldwych Club Ltd. v. Copthall Property Co. Ltd*. (1962) 185 E.G. 219 (as discussed by Lord Hailsham in the passage I have set out above). Later in his speech (at 744C) he said of these cases:

> "*…the desire to increase or diminish the rent was a perfectly legitimate negotiating objective for the, landlord or the tenant respectively, but not, as the court held, by forcing on the opposing party an unwanted advantage which, in the circumstances, would have conferred no real benefit on him, and to which he did not agree."*

57. Secondly, an analysis of the specific appeal in *O'May* shows that the first instance Judge (Goulding J) had specifically taken into account the fact that there would be compensation to the tenant by way of the rent fixed, as regards the new term proposed, but it was held by the Court of Appeal, and affirmed by the House of Lords, that he had been wrong to do so in the particular circumstances.

58. The proposed new terms of the lease under consideration in the *O'May* case are explained by Lord Hailsham at page 737D-G as follows:

> "*The origin of the dispute derives from the desire of the appellants to convert the terms of the tenancy, which did not previously possess this characteristic, into what is known as a " clear lease." The effect of giving effect to this proposal would, according to the evidence, be to enhance the value of the appellants' reversion by a sum somewhere between one and two million pounds, and at the same time to render it more readily marketable partly owing to the increasing part played (amongst others) by pension funds and life insurance companies in purchasing office property as an investment. The purpose of a " clear lease " is to render the income derived from the rent payable by the tenants as little subject to fluctuation in respect of outgoings as may be possible. The method proposed by the appellants in the present case is to transfer in effect the risk of fluctuation of the items in the covenants which in the nature of things will be executed by the*

> *landlord to the respondents by providing that the appellants should be fully reimbursed in respect of the fluctuating elements by provision for fluctuations in what has been referred to, perhaps inaccurately, as the service charge, in return for a flat diminution in the fixed element in the rent. In return for the transfer of risk, the appellants are prepared to accept a fixed reduction in the amount of the fixed rent calculated as a matter of figures at a sum of 50p. a square foot, in actual fact reducing the fixed rent component of the total rent which would otherwise be £10-50 per square foot to £1000 if a clear lease were granted. The main bone of contention between the parties is that the respondents are unwilling to be insurers of the risk of fluctuation, and would prefer instead to pay the full fixed rent of £10.50 a square foot in place of the reduced rent of £10.00*."

59. The changes were explained by Lord Wilberforce as follows:

> "*Instead of the landlord being responsible (as under the old lease) for repairs, maintenance, and decoration of the exterior and common parts of the building, and for providing and maintaining lifts and other plant (including boilers), the tenants are to bear, by way of service charges, a proportion, attributable to their holding, of the cost of these items. These costs are to be ascertained by certificate of the landlord's surveyor which the tenants have only a limited right to challenge. There is further proposed a funding provision under which the tenants are to pay annually an amount based on the assumption that work is done at intervals or on assumed life expectancies. I do not detail these provisions, because at this stage the landlord's proposals must be regarded as one packaged whole and, if the main provision for shifting the burden is unacceptable, must be rejected however fair other provisions taken by themselves might be*."

60. At first instance Goulding J had posed four questions. As Lord Hailsham explained (at 741F-H):

> "*The learned judge admittedly arrived at his decision by the application to the facts of the instant case of four tests or the answers to four questions, after cautiously and, in my opinion correctly, making it plain that " I do not regard them as a correct scheme of analysis for all similar cases." The four tests, or questions, were as follows. (1) Has the party demanding a variation of the terms of the current tenancy shown a reason for doing so? (2) If the party demanding a change is successful, will the party resisting it in principle be adequately compensated by the consequential adjustment of open market rent under section 34? (3) Will the proposed change materially impair the tenant's security in carrying on his business or profession? (4) Taking all relevant matters into account is the proposal, in the court's opinion, fair and reasonable as between the parties?"*

61. The Court of Appeal and the House of Lords both agreed that the reason that the Judge had reached the incorrect decision (i.e. that the new proposed terms should be imposed on the tenant under the new lease) was that the result was that the risk with regard to potentially fluctuating and unforeseeable with accuracy costs was transferred, by the new terms, from the landlord to the tenant and that this was unfair and not adequately compensated for by the reduction in the basic rent payable.

62. Both Lord Hailsham and Wilberforce (the latter also agreeing with Lord Hailsham as well as giving his own reasons) agreed in terms that the landlord's attempt to pass the risk was a perfectly legitimate negotiating aim (per Lord Hailsham at 746A) and one which was based on "genuine and respectable reasons" such that the landlord had a "genuine interest" in the proposed terms being imposed (Lord Wilberforce at 748F-G). However, as both Lord Hailsham and Lord Wilberforce pointed out, the tenant also had a legitimate negotiating aim in resisting the change (at 746B and 749F). The landlord's genuine interest could not be decisive (at 749H)

63. Lord Wilberforce (at 748H and also 749H) also agreed with the landlord's submission that a relevant circumstance was that (as the evidence showed) new leases were being granted and accepted by tenants as "clear leases". However, this factor was also not determinative:

> *"There is no obligation, under section 35 of the Act, to make the new terms conform with market practice, if to do so would be unfair to the tenant. And there is no inherent necessity why the terms on which existing leases are to be renewed should be dictated by those of fresh bargains which tenants may feel themselves obliged to accept."*

64. The above words are to be borne in mind, as applying also to the landlord (whilst recognising landlord and tenant may be in different positions under the 1954 Act). They have a resonance in this case because of the evidence relied upon by the tenant which, it is said, shows that market practice is now for tenants to take leases with terms of years of 5 year multiples with tenant's break clauses at least every 5 years.

65. As regards the question of compensation by way of reduced rent, there was a real question as to whether the compensation by way of reduced rent would in fact turn out to be adequate. The tenant risked incurring a liability which was unpredictable and which could be very great (see Lord Wilberforce at 749A-B). The Judge did not appear to have understood properly the expert evidence (per Lord Hailsham at 744E-745F; 745H; per Lord Wilberforce at 750A) which was to the effect that at the stage of the risk being transferred to the tenant, a valuer would take a view of the "value" of the risk being so but that the market could only "take a view" and that whether that was adequate compensation was not something "anybody could necessarily say today. We would have to wait and see until the end of the term".

66. However, even if the compensation <u>was</u> adequate, the question of compensation cut both ways. If the reduction in rent was adequate compensation for the tenant then not reducing the rent would equally be adequate compensation for the landlord in having to retain the risk. If the starting point under s35 was that the risk was to remain with the landlord then the arguments about compensation did not shift the burden to show it was reasonable to depart from the starting point under s35 (Lord Hailsham at 746B-D).

67. Further, as Lord Wilberforce pointed out, the consideration that the tenants did not have access to the whole building to carry out risk surveys, that they had no means of verifying the work for which they might be charged and that they were a solicitors' practice and not a property investment company and that they were holding under a

short lease whereas the landlord's interests were more long term all pointed to the allocation of the risk continuing to be where it had been placed (that is, with the landlord) by the freely and contractually agreed position under the previous lease (see 749B-H).

68. In my judgment, Mr Walker's brief summary and the further points that I have considered above, are reflected in the 12 "general points of principle" (the "General Points") propounded by Reynolds & Clark at paragraph 8-049. Those 12 points also cover points I have not considered on the basis that they are not immediately relevant to this case. I consider General Principle (10) further below when considering Issue 1. In the extract below I have also omitted footnotes and cross references. The General Points identified by Reynolds & Clark are as follows:

> "*(1) The requirement that the court is to "have regard to the terms of the current tenancy" indicates that there is an onus on the party seeking any change from those terms to justify that change see, e.g. Cardshops v Davies. It has been said that the words "have regard to" are elastic: they compel something between an obligation to reproduce existing terms and an unfettered right to substitute others.*
> *(2) It is insufficient justification for the change that one party will thereby benefit greatly.*
> *(3) The court would be unlikely to allow any change which prejudiced the security of tenure of the tenant in his business, because it is the policy of the Act to protect the tenant in his business: see Gold v Brighton Corp…. Thus, the court should not narrow the user clause contained in the current tenancy so as to restrict the business actually carried on, although there may be good reason why a wide user clause should be narrowed so as to restrict the use of the premises to the business actually being carried on: Gold v Brighton Corp.*
> *(4) The court is unlikely to allow any change in the terms of the tenancy which is sought to be introduced for the sole purpose of increasing the rent payable, by making the lease more favourable to the tenant, if the tenant does not wish that change: see Charles Clements (London) v Rank City Wall….*
> *(5) The court will recognise that the terms of the current tenancy are either the result of a free bargain between the parties or their predecessors, or the result of some previous decision of the court under the Act.*
> *(6) It is the court and not market forces which determines the terms of the tenancy. The fact that other tenants in the market may be prepared to accept the term sought is not irrelevant but is simply one factor to which the court will have regard: Wallis Fashion Group Ltd v CGU Life Assurance Ltd….*
> *(7) This does not, however, mean that the court will seek to "petrify" the terms of the lease. If the terms of the current tenancy are obsolete or deficient, the court may consider this an adequate reason for change.*
> *(8) In particular, the incidence of inflation in recent years will justify the court in introducing a rent review clause, even if the current tenancy was a lengthy term of years at a fixed rent.*
> *(9) The court will bear in mind all relevant circumstances, in particular the fact that the tenant may be in a weak negotiating position.*

(10) Special considerations may apply to a proposal by the landlord to introduce a redevelopment break clause, because that is a term which is concerned not merely with the rights and obligations of the parties under the current tenancy, but also requires a recognition of the policy considerations which govern the exercise of the discretion of the court under s.35(3) in relation to the duration of tenancies….

(11) The fact that, at least on paper, the landlord or tenant can be said to be compensated for the proposed change by an increase or reduction in the rent payable under the new tenancy does not of itself justify the change. In particular, if a tenant is being asked to shoulder a risk which is more appropriately borne by the freeholder in return for a reduction in rent, he is being made an involuntary insurer of that risk. (Compare the approach of Goulding J in O'May at first instance on this point with that of the Court of Appeal and House of Lords).

(12) *All the preceding considerations are subject to the overriding question: whether the proposed change can be justified on grounds of "essential fairness" between landlord and tenant."*

Issue 1:Should there be a change in the terms of the new lease compared with the 1996 Lease, so that the agreed length of the proposed lease being 15 years, there should be tenant-only break clause exercisable every 5 years?

69. The term (in the sense of duration) of a new lease is dealt with by s33 LTA 1954 which provides:

> *" **33. Duration of new tenancy.***
>
> *Where on an application under this Part of this Act the court makes an order for the grant of a new tenancy, the new tenancy shall be such tenancy as may be agreed between the landlord and the tenant, or, in default of such an agreement, shall be such a tenancy as may be determined by the court to be reasonable in all the circumstances, being, if it is a tenancy for a term of years certain, a tenancy for a term not exceeding fifteen years, and shall begin on the coming to an end of the current tenancy."*

70. The parties have agreed that the new lease should be of the maximum duration that the court can order, namely 15 years. Although Resham subsequently offered a shorter 10 year term or a 15 year term with a mutual break at year 10, neither have been accepted. This offer was made on 20 February 2024, but, in any event, neither expert had provided evidence of rent on that basis, nor was there relevant witness evidence.

71. The sole question for me in this context is therefore whether the proposed new lease of 15 years should contain a tenant's break clause at years 5 and 10. As is clear from the authorities, a break clause is a term of a lease that will fall within s35 LTA 1954 rather than falling under s33 LTA 1954.

72. I have already outlined the general approach that the courts take to s35 LTA 1954. I was referred to further cases dealing with the approach to break clauses under that section. I take them in order of date of decision.

Further law on s35 LTA 1954 in the context of break clauses

73. In *Adams v Green* [1978] 2 EGLR 46 the landlord contended that a new lease of shop premises should include a break clause (on two year's notice) to allow reconstruction in view of the prospects of development by them or their successors. The Court of Appeal, allowing the Landlord's appeal in the case against a refusal to order such break clause, ordered a new lease of 7 years (and not the 14 years sought by the landlord) but with a landlord's break clause for rebuilding on giving two year's notice.

74. The main judgment is that of Stamp LJ. Roskill LJ is reported as delivering a concurring judgment, which is not reproduced in the law report provided to me, and Cumming-Bruce LJ is said to have agreed with Stamp LJ.

75. Stamp LJ considered that the Judge below had been incorrect to conclude that because the property was, in his (the Judge below's) view, not "ripe for development" there should be no rebuilding clause (i.e. break clause to enable rebuilding). The Judge had however ordered a 7 year rather than 14 year term on the grounds that redevelopment was sufficiently on the cards to make it unjust to saddle the landlords with a 14 year term with no break clause. Stamp LJ considered that it was not inappropriate to include a break clause reflecting the "probability or likelihood or possibility" of development "in the near future". He considered that the Judge had failed to take into account the following considerations:

(1) First:

> "*There could be no certainty as the future. There can be dramatic changes in market conditions, and no certainties today as to what may be a profitable redevelopment in four of five year's time. It is to be observed, so far as it is relevant, that the judge did not think redevelopment on the cards after the end of seven years*"

(2) Secondly, it was (and is) no part of the policy of the act to give security of tenure to a business tenant at the expense of preventing redevelopment: see s30(1)(f) itself. Where redevelopment is "in prospect" it would be right that the prospect should be reflected in the terms of the tenancy agreement. The result might be that the tenancy would be less valuable but the primary purpose of the Act is to protect the tenant in the enjoyment of his business and not to confer on the tenant a saleable asset.

(3) Thirdly:

> " *the unfairness to the tenant of including the proposed break clause can well be exaggerated. If the tenant's submission that the property will not be ripe for development within the next seven years is well founded, he will not be disturbed by the existence of the break clause during the continuance of his seven-year tenancy, because the right to break will, of course, not be exercisable."*

(4) Fourthly:

> *"Furthermore—and this is another consideration which the learned judge appears not to have taken into consideration—if the break clause is included the tenant will nevertheless be protected by the terms of the Act itself from the effect of any notice not given bona fide for the purpose for which it is intended, for if the tenancy is determined by a notice it will be open to the tenant to apply for a new tenancy, and the then landlords, in order to sustain an objection to granting a new tenancy, would have to prove the intention to redevelop. Nor does the judge notice that, in the final resort, as counsel for the landlords pointed out, the tenant would be entitled to the compensation provided for by the Act."*

76. In conclusion, Stamp LJ referred to the wide discretion under LTA 1954 to include such clauses as are fair and proper in all the circumstances and concluded that there was no doubt that there would be more hardship on the landlord by refusing the proposed break clause than there would be on the tenant if the break clause were included.

77. However, when considering landlord's redevelopment there is, as *Reynolds & Clark* points out, a tension or conflict between the considerations that insofar as possible the lease should not prevent the landlord from using premises for the purposes of redevelopment on the one hand and that, on the other hand, the tenant should be provided with a reasonable degree of security. Where the issue arises in the context of the length of term, these two considerations have to be balanced (see paragraph 8-090 sub-paragraph (2) and the cited passage from *JH Edwards & Sons v Central London Commercial Estates* [1984] 1 EGLR 103 per Fox LJ which reflects what I have said about tension or conflict).

78. That there is such a conflict or tension and that the landlord's desire to redevelop is not a "trump card" is confirmed, in the context of landlord's break clauses, by Lewison J (as he then was) in *Davy's of London (Wine Merchants) Ltd v City of London Corporation* [2004] 3 EGLR 46 at 47G (see also *Horse Race Betting Levy Board v Grosvenor Properties* (unrep. 2001) referred to in *Reynolds & Clark* at paragraph 8-090 (3)). In the *Davy's of London* case, having referred back to the statement of Stamp LJ in *Adams v Green* that it was no part of the policy of the LTA 1954 to give security of tenure to a business tenant at the expense of preventing development, Lewison J went on to say:

> "*[23] I emphasise the word "preventing" which is not the same as "delaying". In that case, the landlord had no plans for redevelopment but wished to have flexibility to sell to a developer. The Court of Appeal, reversing the decision of the trial judge, ordered the inclusion in the new tenancy of a break clause operable on two year's notice. In other words, the tenant had guaranteed security of tenure of two years*."

79. In *National Car Parks Ltd v Paternoster Consortium Ltd* [1990] 1 EGLR 99 a landlord's redevelopment break clause was included in the new lease, the test for determining whether a development break clause should be incorporated being expressed by the court as being whether there was a real possibility, as opposed to a probability, that redevelopment would be practicable within the term of the lease.

Here too, a balancing exercise was undertaken between the interest of the landlord and the interest of the tenant: the landlord's wish to have the flexibility to redevelop did not of itself automatically trump the interests of the tenant in security of tenure.

80. I turn to consider the authorities on the insertion of tenant's break clauses in new leases granted under Part II LTA 1954.

81. The first decision in point of time that I was referred to was *First Secretary of State v Greatestates Ltd* (unrep. 2005 Central London County Court, HHJ Dean QC) which is referred to in some detail in *Reynolds v Clark*. I adopt, and in part paraphrase, paragraph 8-093 in *Reynolds & Clark*. Both landlord and tenant were content with a 10-year term of office premises in Hackney. The tenant wanted a break clause after the fifth year of the term as it said that its property requirements generally, and in particular whether it needed the subject property, were uncertain. The tenant (a government department) said that there was a realistic possibility of relocation by the end of the fifth year of the term.

82. The Judge accepted, by analogy, that the test of determining whether the tenant should be entitled to the insertion of a break clause (or at least a necessary condition for it) was the same as for determining whether a landlord should be able to obtain a redevelopment break clause i.e. was there a realistic possibility (as opposed to probability) that the tenant would need to vacate at the end of the five year period.

83. However, even on this test, the tenant failed. The evidence of the tenant was that there was no need for flexibility at the demised premises specifically. The tenant had a general policy over the whole of its estate to have short but commercially realistic terms for office premises. It had no evidence that the subject property was earmarked for a possible, let alone a probable, move. On the contrary, the evidence was that the tenant had vacated other property in Hackney and relocated staff to the subject property. The inference was there was no realistic possibility of a move in five years time. The policy of the government department to retain employment opportunities in deprived areas (of which Hackney was one) was a fact supporting that conclusion.

84. At paragraph 8-094, *Reynolds & Clark* sums up as follows (footnotes excluded):

> *"As is apparent from the facts of First Secretary of State v Greatestates Ltd the tenant will be required to justify the incorporation of the break by reference to factors affecting the premises demised and not by reference to general policy considerations, e.g. to retain flexibility. Thus, for instance a concern about competition adversely affecting the business will not of itself justify the incorporation of a break clause if the competition about which concern is expressed affects tenants generally rather than the tenant in particular with respect to his occupation of the demised premises.* [The case of *Eason and Son (NI) Ltd v Central Craigavon Ltd* 19 June 2004 [2003] 6 WLUK 496, a Northern Ireland case where the relevant statutory provisions were identical, is then discussed as demonstrating the example given regarding a concern about competition).]

85. Returning to the question of the relevant test, *Reynolds & Clark* says at paragraph 9-091 (footnotes excluded):

> "*It was suggested in earlier editions of this work that the test for incorporation of a landlord's redevelopment break clause may apply by analogy, i.e. is there a realistic prospect of the event happening (usually affecting the tenant's relocation of its business), for which the break is sought during the duration of the term to be granted. This test was adopted in Dukeminster Ltd v West End Investments (Cowell Group) Ltd [2019] L.&T.R. 4 CC.*"

86. In the *Dukeminster* case, HHJ Saggerson identified the relevant issue for present purposes as being as follows:

> "*[42] The claimant seeks the incorporation of a break clause in the new lease to be exercisable in the event that the occupation of the building becomes intolerable and the claimant is not able to have quiet enjoyment in the event that adjacent redevelopment works prove unbearable. It is submitted on behalf of the claimant that if the defendant's position on the redevelopment is right, to the effect that all will be well and intrusion minimised by careful adherence to common regulatory standards, then the defendant has nothing to fear; the precondition to invoke the break clause will not arise and the defendant's position is safeguarded. I do not accept this as a viable approach which seems similar to the idea that an injunction can safely be granted irrespective of a triable issue where there is no risk of a breach.*"

87. He went on to say:

> "*There is no binding authority to assist in this context but I proceed on the analogous basis of a landlord's redevelopment break clause (Adams v Green [1978] 2 E.G.L.R. 46). It is logical to apply the same test namely:*
>
> > *`"42.1 Whether there is a real possibility that the event will occur that is described as the precondition of the exercise of the rights under break clause—that is, is there a real possibility that the claimant will be deprived of its Quiet Enjoyment due to the intrusion of neighbouring redevelopment work during the term of the lease;*
> >
> > *42.2 If there is such a real possibility, on whom should the burden of the event fall?"*
>
> [43] *A "real possibility" in my judgment, is a prospect that is more than a fanciful conjecture, so the threshold is not a high one. I accept that in a case such as this, if such a real possibility exists then the burden of the consequences should fall on the landlord whose capital interest in the building is unlikely to be affected in the medium or long term."*

88. On the facts, the Judge found that there was not a real possibility that the relevant event would occur:

> *"[43]…However, in my judgment the claimant's fear of intrusion to the extent that it is deprived of its quiet enjoyment is unwarranted, speculative and, in the technical sense, fanciful."*

The evidence regarding the tenant's needs

89. Both factual and expert witnesses dealt in their written evidence with the issue of whether or not the new lease should include a tenant's break clause. Large parts of this "evidence" was either not evidence but submission or sought to explain or draw inferences from factual evidence which largely spoke for itself.

90. In reality the evidence was directed, or might be said to be directed, at the following three inter-related points:

    (1) Kwik-Fit asserts, through their factual witness, Mr Andrew Brodie, that as a matter of fact and looking at Kwik-Fit's operations there is an ongoing position of developing change, which development and outcome is unpredictable, and that in those circumstances a tenant's only break clause at years 5 and 10 is appropriate.

    (2) The factual position in (1) explains why there is, and is in turn evidenced by, a policy adopted by Kwik-Fit of taking leases with 5 year breaks (usually 15 years, though it has accepted 10 year leases).

    (3) The Kwik-Fit policy in (2) and its significance as set out in (1), reflects market practice in the quick fit car maintenance service industry generally and/or demonstrates that, rather like rent review clauses which used to be rare and became common given the advent of inflation, not inserting a term as to break clause as advocated for by Kwik-Fit would be to unfairly "petrify" the terms of the 1996 Lease.

91. In addition, there was a certain amount of evidence (and then debate before me) as to whether the inclusion of a break clause would or would not add value to the tenancy and/or diminish the value of the freehold reversion and whether or not that could be compensated for (if granted) by adjustment to the rent figure.

Desire for flexibility

92. The first issue was that of any need for flexibility in terms of the suitability of the Premises for the business carried on there by Kwik-Fit in the light of relevant potential developments in the future.

93. I have no doubt that most tenants would like, if they can get it, a lease under which they have security of tenure (in terms of the term (i.e. length) of a lease) whilst at the same time having a one-way flexibility which enables them to terminate the lease at their option at earlier stages during the term of the lease.

94. It is noticeable in this case that the tenant's break clause proposed is completely unrestricted and it is not sought to be limited by the existence of circumstances which it is said could arise in the future and which (alone) would justify the tenant now being given the ability to break the lease. Although this was not explored very much before me, I suspect that the reason for this is that it is not possible to formulate such circumstances in a manner that is certain enough to do anything other than encourage, rather than avoid any litigation. However, the consequence is stark. If the break clause is unconditional then the tenant can exercise it for e.g. commercial reasons

wholly removed from the existence of circumstances, the possible existence of which in the future, are said to justify the inclusion of such a break clause.

95. Further, unlike a landlord's redevelopment break clause, there is no court regulation of the position (as there would be by the protection under the 1954 Act so the landlord on a landlord's redevelopment break clause being activated would still potentially need to establish the relevant ground under the Act to the court's satisfaction to defeat any application for a new tenancy).

96. As regards the circumstances or possible future developments which, it was said, would justify a tenant's (only) break clause being introduced were identified by Mr Andrew Brodie in his first witness statement. I deal with these matters individually but, as will become apparent, they were largely matters which might or might not impact on particular sites operated by Kwik-Fit but were not in terms tied by Mr Brodie to this particular site and these Premises.

97. Indeed, his position in oral evidence was that he could identify general issues which might impact upon Kwik-Fit's business as a generality, but he was not an expert as regards (in effect) their impact or potential impact upon the Premises.

98. As identified by Mr Walker in his helpful written closing submissions, the matters in question were as follows:

(1) creeping encroachment of residential development up to former out-of-town industrial estates, with consequent restrictions on working hours, noise and practices in industrial units;

(2) the practical impact of parked cars obstructing access to units;

(3) "green" policies impacting on (a) vehicle charges for entering; (b) restricting types of vehicles and (c) imposing one way systems in areas within which units are sited thereby causing customers to avoid units and giving rise to a consequent need to relocate as a result of the unit ceasing to be economic;

(4) Kwik-Fit developing other areas of business where units with restricted access could be unsuitable;

(5) Unsuitability of units from the perspective of size to enable electrical vehicle charging capacity to be installed;

(6) The need for more storage as a result of ever-increasing tyre sizes.

99. In my judgment, these general concerns raised by Mr Brodie no doubt are general factors that Kwik-Fit has in mind when looking for new sites or in connection with existing sites (e.g. when deciding whether to trigger break clauses, and/or in deciding whether to seek and or in negotiating a new lease). I was however wholly unpersuaded that the tenant has proved a real possibility of any of the identified developments occurring in relation to the Premises within the agreed term of the new lease of 15 years. The evidence raised what I might describe as general considerations to bear in mind in relation to Kwik-Fit's national portfolio of properties (and any additions thereto or any renewals thereof) but did not attempt to demonstrate that they

could apply to the Premises, other than by reference to "anything can happen" and "future change is unpredictable".

100. Reliance was placed on what were said to be changes in the industry, particularly over the last 5 years and with the advent and increasing number of electrical vehicles, on the roads but there was no evaluation of whether such changes as were made to date or were envisaged and being planned for, would impact on the use of the Premises and raised possible questions as to the latter's suitability. Further, the sort of developments that were relied upon, such as creeping residential development, was not sought to be explored and explained with regard to the Premises as opposed to being a general concern over the whole portfolio of Kwik-Fit properties.

101. Finally, Mr Walker went so far in his written closing submissions to summarise Mr Brodie's evidence as follows:

> "*Kwik-Fit must remain flexible, able to adapt to the industry, consumers and tech changes, some of which it can plan for a few years ahead, some of which it must react to in months, and so must be able to adapt its property portfolio".*

The logic of this seemed to me to suggest that if this was right Kwik-Fit should be seeking tenant's break clauses, operable at any time within the term, but on perhaps 3-6 months notice.

102. **Creeping residential development**: the industrial estate upon which the Premises is situated is comparatively new. Kwik Fit's operation at the Premises is sited at the corner of two roads with a fairly substantial industrial estate surrounding it on its South and West sides (including the industrial estate road to the far west, with another industrial unit between that road and the Premises.). To the north of the road to the north (Vermont Road) there is a fairly new set of buildings which appear to be of the same genus as an industrial estate (containing buildings such as a Halford's Autocentre and various shops and offices). The same is true of the opposite, east, side of the north/south Road running along the eastern boundary of the Premises. Of course, in one sense anything is possible, but realistically the suggestion that the industrial estate on which the Premises is situated is at the risk of being affected by creeping residential development is, in my judgment and on the evidence before the court, fanciful.

103. **Obstruction by parked cars:** The Premises have significant parking capacity. There is no evidence suggesting that the same is (or is likely to become) insufficient such that parking by customers seeking to use Kwik-Fit would cause any relevant obstructions. Similarly, there is no suggestion based upon the situation on the ground, that there would be obstruction from other parked vehicles in the area but not customers of Kwik-Fit. Indeed, Kwik Fit also has the benefit of a right to use the Access Way under its lease and its landlord apparently has the benefit of an easement over the same. The suggestion that the Premises are at risk of being affected by obstruction caused by car parking is, in my judgment and on the evidence before the court, fanciful.

104. **Green policies:** Other than assertion of the general point that "green policies" can affect sites there was no actual evidence as to any likelihood of green policies affecting the Premises and their suitability for Kwik-Fit's operation. The suggestion

that the Premises are at risk of being affected by obstruction caused by car parking is, in my judgment, and on the evidence before the court, fanciful.

105. **Development of other lines of business, premises becoming unsuitable by reason of restricted access:** Again, no concrete evidence or detail was put forward in relation to this matter with reference to the site on which the Premises are situated. It was said that Kwik-Fit was developing other areas of business which may not be suitable for sites with restricted access but it was not explained what those lines of business were, nor was it even said that the Premises was a site with relevant restricted access or that such new lines were envisaged as being carried out at these Premises. The suggestion that the Premises are at risk of becoming unsuitable because new lines of business were being developed which could not be operated because of restricted access is, in my judgment and on the only evidence before the court, fanciful.

106. **Inadequate size of Premises for electrical vehicle charging capacity**: Again, the evidence was little more than assertion. The site is of a generous size. The likelihood is that as matters develop any plant/equipment required will become more efficient and smaller in size rather than the reverse but even by reference to the current state of things no evidence was put forward to explain how the site of the Premises was likely to be or could become inadequate to cater for this possible need. The suggestion that the Premises are at risk of becoming unsuitable because of being or becoming of an inadequate size to allow for electrical vehicle charging is, in my judgment and on the only evidence before the court, fanciful.

107. **Inadequate size of site for tyre storage:** Again, the site of the Premises is a generous size. There is clearly potential (in size terms) to build or provide for further storage on the site but outside the current building. Again, there was no evidence addressing this issue from the perspective of the Premises, how they are currently used, any perceived limitations and the like. Again, the suggestion that the Premises are at risk of becoming unsuitable because of being or becoming of an inadequate size to allow for electrical vehicle charging is, in my judgment and on the only evidence before the court, fanciful.

108. The two last points, regarding potential inadequate size of the premises, also fitted ill with the tenant's expert's view that the surplus site laid to grass had no real value to a tenant and is currently a management burden.

109. Mr Fletcher made the two points that:

(1) At the end of the day the evidence did not demonstrate any need for "flexibility" (i.e. by way of insertion of a tenant's break clause) "at the demised premises specifically" and

(2) There was no evidence, oral or documentary, that the subject matter was earmarked for a possible, let alone a probable, move.

110. Mr Walker countered, asserting that Mr Flecther was wrong in these respects and "Nelsonian": Mr Brodie's evidence was that the need for flexibility applied to all Kwik-Fit's premises, and that that necessarily includes the Premises. In my judgment however, Mr Fletcher was correct in the two points that he made. I do not accept Mr

Walker's submissions on this point. Although there may be cases where certain considerations, as a matter of fact, do apply to what Mr Walker described as "every demise of a national business or to many such demises", I do not consider that the considerations identified in this case have been shown to apply to the Premises in this case.

Kwik Fit's Policy

111. I turn to the question of Kwik-Fit's policy. First of all, I consider that there was to some extent a tilting at windmills. As the evidence emerged it became clear (if it had not been before) that when Mr Brodie said that Kwik-Fit (and the group of which it is a member taken as a whole) had a "policy" of seeking leases of relevant premises for 15 years but with breaks at 5 year points, that policy was not absolute and could (and did) give way to other factors in certain circumstances.

112. The first conclusion that I draw from this is that any suggestion that a 15 year lease with no tenant's break clause would be "petrifying" terms that should not be petrified because they do not reflect market practice (and need) or, as Lord Wilberforce put it in *O'May*, they are out of date or unsuitable, is simply not made out. That conclusion is supported by other evidence which I refer to below.

113. As regards the evidence relating to the alleged "policy", Mr Brodie wrote to Mr Hardy by email dated 14 November 2022 setting out what was said to be Kwik-Fit's policy since he had been with the company from 2012 of taking 15 year leases with tenant only breaks at years 5 and 10 but fairly admitted that "on occasions" there have been negotiations to remove the first break option or take shorter leases "for commercial reasons". I would add Kwik Fit has also on occasion taken longer terms than 15 years. Further, it has sometimes taken terms with no breaks or with more breaks than every 5 years.

114. Statistics of Kwik Fit group leases were produced. In my judgment they make out the conclusion that I have reached and what Mr Brodie said in his 14 November 2022 email to Mr Hardy.

115. After March 2017, Kwik Fit has entered into leases of 12 <u>new</u> properties (leaving aside some more recent leases).

(1) In terms of the length of the leases: 4 are of 10 years; 5 are of 15 years; 2 of 20 years and 1 of 25 years.

(2) In terms of break clauses every 5 years: only 4 have a break clause every 5 years (or more frequently, e.g. break in year 5 and annual breaks thereafter); 4 have a break clause but not every 5 years (2 x 15 year term, break in year 10 only; 1 x 20 year term, break in years 10 and 15; 1 x 25 year term, break in year 15); 4 have no break clause at all (1 x 10 year term; 2 x 15 year term and 1 x 20 year term).

(3) Mr Walker submitted that "crucially" the purpose of two of the leases with no break clauses was to generate capital: one being a 15 year internal group lease set up so that the reversion could then be sold with the lease and another being a sale and leaseback. As I explain below, it does not seem to me that that is a

reason to exclude these leases from the overall picture. As with the "London Metric Project", which I consider next, the desire for flexibility by way of break clause has simply given way to other commercial considerations.

116. In connection with what was described as the "London Metric Project", Kwik Fit entered into 26 new leases of existing premises from another group company. This was done to "generate capital", the freehold reversions held by the group company then being sold. Each lease was completed on 6 March 2020 for 15 years with no break clause. The fact of the matter is that after completion of the project, Kwik Fit was tied into 15 year leases with no break clause. Mr Walker submits that these leases are irrelevant to the question of Kwik Fit's policy. He submits that prior to the project, the group held a freehold and that afterwards the group held 15 year leases. The purpose, he says, was to generate capital not to ensure flexibility with a break clause. I am not attracted by these arguments. At the end of the day, the group decided to make money selling its freehold with a leaseback so it could continue to use the properties and, to maximise the capital sums receivable on sale, decided to take 15 year leases with no break clauses. The purpose may have been to generate capital rather than flexibility with break clauses but to my mind this just demonstrates that Kwik-Fit's "policy" of having leases of relevant premises of 15 years with 5 year break clauses will give way in certain circumstances to other policies or aims. Mr Walker says that the flexibility is no different before or after but of course the position of a group freehold owner has changed to there being an outside, third party, freehold owner.

117. There are 80 leases which were renewed by negotiation after March 2017.

(1) The terms of these leases are almost all 10 or 15 years.

(2) 23 do not have tenant's breaks at one (usually the first one at year 5) of the five year anniversaries of the lease.

(3) 25 are said to be renewal or re-gear leases with terms of variously 10 years (18); 15 years (6) and 17 years (1). These have no break option.

(4) So 48 of the 80 do not have the pattern of 5 year tenant's breaks which Kwik Fit says is its policy to obtain.

118. There is evidence of a number of other leases entered into since March 2017 (referred to as the Gibson Properties and Zurich Properties) with no break clauses but I do not need to deal with the detail of them further as they are said, with some justification, to be out of the norm, but in any event the overall pattern is fairly clear. As adding little to the overall picture, I have also not gone into the detail of another 15 renewal leases (which are in large part for terms of 5 years or under or just over 5 years by a year or two) nor five newer leases of new premises entered into.

119. Mr Fletcher produced various statistics to demonstrate that of the overall number of leases accepted or negotiated by Kwik-Fit, a high percentage did not match Kwik-Fit's "policy" that I have referred to. I need not go into those statistics though I have them in mind. In my judgment the fact that the policy is not a rigid one and that it bows to other considerations is well made out by the evidence that I have seen and already referred to.

120. Mr Bloomfield was criticised by Mr Walker as (wrongly) arguing that the majority of the leases scheduled by Mr Brodie in exhibits to his witness statement do not have a break clause (and, wrongly it was said, praying this in aid to support his (Mr Bloomfield's) position that the Kwik Fit group takes long leases without breaks). The statistics speak for themselves. I also reject Mr Walker's connected submission that this argument involved Mr Bloomfield "wilfully" choosing to ignore special commercial reasons behind the taking of certain leases. As I have said, as regards the London Metric Project, I agree with Mr Bloomfield. However, I reject Mr Walker's submission on this narrow point so far as it leads to any corollary that Mr Bloomfield's analysis is inaccurate and therefore his credibility as an independent expert is thereby impugned.

The industry and market generally

121. Mr Hardy, Kwik-Fit's expert, draws on 14 comparables from Kwik-Fit (8), Halfords (2), ATS (4) and National Tyres (1) to demonstrate what he says is an industry move from longer leases with no break clause to shorter leases (up to 15 years) generally with breaks. Whilst as a generality I am prepared to accept that there has been a move in this direction, the detailed Kwik-Fit position shows that there are dangers of looking at such small samples and treating them as necessarily reflective of most recent lettings and renewals.

122. As regards Kwik-Fit, I have already dealt with its "policy".

123. As regards Halfords, it has provided an email stating (but untested by cross examination and disclosure) that the business is not currently seeking new leases in England and Wales but that it previously sought leases in England and Wales of no more than 5 years with 3-year break options (emphasis supplied). It later provided a further email stating that its "starting point" remained a 5 year lease with a break at year 3 but that it had "capitulated" on the 3 year break at some sites where it had been incentivised. In other words, commercial considerations could override the "starting" policy position. Of course these emails also highlight the point that Kwik-Fit could have sought (or agreed to) a lease with a shorter term or with mutual break covenants, it still having LTA 1954 protection.

124. As regards ATS, an email refers to a "rule of thumb" for an ATS Euromaster Lease acquisition being based on "5 year multiples, with the norm being a 10 year term with a 5th year break". Again, this suggests that Kwik-Fit is seeking in this case to go beyond any ATS norm in seeking a 15 year lease (the maximum the court can order). It also suggests that a "rule of thumb" is not a rigid policy.

125. I reject Mr Walker's (written) submission that tenants in tyre/exhaust servicing will: "only entertain" terms of 5-year multiples with 5-year tenant only breaks.

126. Further, I do not have much if any real evidence, as to whether one of the commercial factors lying behind the deals produced to me as evidence may be the type and location of the premises in question (as well of course particular market conditions at the time and in the area concerned). One might imagine that with a crowded inner city site, with limited space, there may well be a greater imperative for the tenant to seek a shorter term or term with (a) break clause(s) than in the case of premises such as the Premises, by reason of the greater risk of the sort of factors that I have already

considered as not applicable to the Premises (that is, e.g. inadequate space, inadequate parking and so on emerging in the near future).

127. The evidence seems to me to demonstrate that the length of any negotiated length of a lease and the existence of break causes is very much a commercial decision for landlord and tenant and dependent upon local market conditions and the strength of the relevant parties in any negotiation as well as each side's overall commercial imperatives.

128. I accept, for what it is worth, that in the relevant business area the desire of tenants and their starting point is to seek leases of 5 years or above (in multiples of 5 years) and to seek tenant's break clauses, at the least after 5 years. However I consider that this is a starting point or "policy" that will yield to other commercial considerations. I do not consider that the evidence shows in any respect that the result is that there can be said to be a norm of leases only being of these durations and with these break clauses, such that an absence of a tenant's break clause in a 15 year lease can be said to be an anomaly or such a lease be said to be an "obsolete" or "petrified" lease.

129. I have had in mind Mr Bloomfield's evidence regarding the three acquisitions by FOAC in Shipley (Bradford), Stratford upon Avon and Tonbridge Kent which show a tenant taking relevant leases without a break clause, but these examples seem to me to be further straws in the wind, though they do at least suggest that not all operators on every occasion will only take leases on the basis submitted by Mr Walker (i.e. no leases over 5 years unless there is a 5 year break clause).

130. Similarly, I reject Mr Hardy's use of a recent PACT determination in relation to Kwik-Fit premises at Grimsby as demonstrating how the fast fit sector has generally moved towards shorter leases of 5 year multiples. It appears that the landlord was prepared to agree the inclusion of tenant breaks and I agree with Mr Bloomfield that this case cannot be taken as an indication that the parties agreed that a long term lease without tenant's breaks was "no longer achievable" (on the open market),

Damage to landlord's reversion in value terms and rent level as compensation

131. Mr Walker's first relevant submission under this was that, on the facts here, no damage to the landlord's reversion (in terms of its value) was in fact demonstrated in the event that a tenant's break clause was inserted into the proposed lease. If wrong on that, he submitted that any damage could be compensated for by a higher rent.

132. As regards to damage to the financial value of the reversion, the landlord pointed to Mr Brodie's evidence regarding the London Metric project (on a group basis, a sale and leaseback, the leaseback comprising leases of 15 year terms with no break clause). Mr Walker submitted that Mr Brodie gave no evidence as to whether a break clause would affect the value of the landlord's reversion. However Mr Brodie in terms said that the purpose of the leases was to "maximise the consideration for the sale of the freehold title" which, in context, can only mean that the value of the freehold reversions was greater without tenants' break clauses than with them. I am against Mr Walker on this point.

133. Further, Mr Bloomfield made the same point explicitly and implicitly in his report (e.g. at paragraphs 1.2.3 and 2.4.33).

134. That there would be a negative effect on the value of the landlord's reversion were tenant's break clauses to be inserted makes perfect sense: the tenant can escape the deal on an unrestricted basis but the landlord cannot (even on a restricted basis as being limited by the constraints of the LTA 1954 regarding the grant of new tenancies). The burden of proof on this issue is, it seems to me, on Kwik-Fit and I am not satisfied that it is discharged.

135. Mr Walker also submitted that if, as Mr Mander clearly considered, a lease without breaks was more valuable to Resham, a lease with breaks or a shorter lease would be more valuable to a tenant and that this could be reflected in the level of rent set by the court.

136. In my judgment, assuming that the level of rent set will adequately "compensate" the landlord (if a tenant's break clauses is included) or the tenant (if it is not included), then this factor is simply neutral and does not point in favour of inserting tenant's break clauses if there is no other reason to do so. In other words I would adopt what Lord Hailsham said in the *O'May* case. Of course, if there is otherwise a good reason to include a tenant's break clause this factor would be relevant on the overall fairness point of doing so.

137. I accept that there may be an argument that the tenant's interest is not just financial and relates to carrying on the current business but this was not explored further before me. In any event, the LTA 1954 is directed primarily at security of tenure not at ability to terminate the lease. As regards that, the tenant in this case had the opportunity of a shorter term and/or a mutual break clause which would still have given the tenant the security provided by the 1954 Act, even if the landlord's break clause was operated (or the lease came to an end).

The evidence of the experts regarding tenant's break clause and Mr Bloomfield's evidence

138. So far I have reached conclusions on the evidence that I have referred to without needing to consider Mr Bloomfield's evidence. Because that evidence is relevant to assessing Mr Bloomfield's credibility as an expert, I do however have to consider it briefly.

139. As I have said, I do not criticise Mr Bloomfield's analysis of the statistics put forward regarding tenant's break clauses by Mr Hardy.

140. I should note however that, as regards break clauses, both experts were largely putting forward factual matters, and drawing inference from them rather than giving matters of expert evidence. It is for the court to evaluate matters of fact and it is unfortunate that both experts seem to have strayed from giving expert evidence to giving their assessment of the factual position. This no doubt follows from the content of their instructions.

141. I also note that the permission for expert evidence by report was limited as follows (see Order of DDJ Grice dated 21 April 2022):

" **Expert Evidence**

> 12. The parties shall exchange expert reports on the issues of rent and interim rent simultaneously, such reports to include valuations, floor areas, evidence of comparables etc by 4pm on 27 October 2022".

142. The vice of straying into submission was particularly to the fore in Mr Bloomfield's report where he in terms limited his expert opinion to the issue of rent (see paragraphs 2.2 and 2.3) but as regards the inclusion of a tenant's break clause, in response to a request, he "commented" on the Claimant's case. In effect he argued the law and how it applied to the facts of this case, his report reading more like a skeleton argument than an expert report and concluding that the Claimant's request for options to break was:

> "*nothing more than a fanciful requirement. No site specific reason has been given and the request is not supported by any Company policy nor indeed the open market evidence for this particular type of property. The claimant's request has no substance and fails to meet the tests set out in the O'May case*".

143. In this respect it seemed to me that he descended to the arena and went well beyond what the scope of an expert's proper evidence.

144. Regrettably, there are other aspects of Mr Bloomfield's evidence regarding length of leases/tenant's break clauses that I am concerned about.

145. In an email dated 29 November 2022, he sought information from the agent dealing with a letting to FOAC at Tonbridge Trade Park. In that email he said:

> "*I'm acting for a Landlord of Kwik-Fit unit in respect of a lease renewal, and am preparing an Expert's Report for Court*
>
> *I am arguing that auto fast fit operators are prepared to take 10 year leases without break and am therefore looking for recent lettings to such operators.*
>
> *I note that you have let Unit 4 to Formula One. Could you let me know what length of lease they took, the date when the lease commenced and whether or not any break clauses were included*"

146. The vice is in the second paragraph of this email. It is for the expert to reach an independent conclusion, his or her opinion, as to what the position is on the available evidence. It is not to "argue" a particular position and not to reach a conclusion and then seek the evidence afterwards. Further, if putting forward factual evidence said to reflect the market, it is important the expert is both accurate and that the evidence relied on can properly be taken to reflect the market.

147. That Mr Bloomfield's approach was at least to some extent, to act as a "hired gun" as Mr Walker put it, was to some extent confirmed by other factors. It is fair to point out that these factors were by reference to the gathering and presentation of factual rather than expert opinion evidence. Thus, and by way of example:

(1) He referred in his report to FOAC "currently acquiring units nationwide on the basis of long leases without breaks", but this seems to depend upon three acquisitions: two in 2020 and one in 2021. The implication was that that was FOAC policy or practice rather than there having been three cases in three years

when that had occurred but no further evidence regarding whether these were the entirety of acquisitions and, if not, what the other acquisitions were. He did not provide any evidence from FOAC itself. Nor did he deal with premises "under contract" other than the Tonbridge one. A flyer he relied upon shows other premises "under contract" at Warrington, Wellingborough, Wigan and premises opening soon at Worksop.

(2) He asserted (in paragraph 2.4.18) that "*Certain users prefer long leases and do not necessarily require an option to break. Fast-fit motor centres fall within this category*". He then evidenced that statement by giving examples where Kwik-Fit and Formula One had been prepared to take long leases without break (emphasis supplied). This is not the same as them "preferring" such leases.

148. I shall have to consider how these concerns about Mr Bloomfield's evidence (and to a lesser extent Mr Hardy's evidence) carry across to my assessment of the expert evidence regarding rent.

Conclusions on inclusion of tenant's break clause

149. The starting point is that there is no tenant's break clause in the current 25 year lease. If one is to be inserted into the proposed 15 year lease the burden lies on the tenant to demonstrate that it is fair and reasonable to include such a clause.

150. The following paragraphs seek to summarise the conclusions reached earlier in this judgment.

151. In this case the tenant is unable to establish that there is a real possibility of there being a need to terminate the lease because of the Premises becoming unsuitable for the carrying on of the tenant's business. The matters relied upon by the tenant in this context may apply to other premises but do not apply to the current Premises. Rather, the tenant's desire is simply to retain maximum flexibility. The legal conclusion is similar to that reached in the *Greatestates* and *Dukeminster* cases.

152. Absence of a tenant's break clause cannot be said to make the lease one that has been wrongly "petrified" or "obsolete". Market practice shows that commercial considerations do operate to result in tenants in the relevant line of business accepting leases without break clauses as sought in this case

153. The tenant could have agreed a lease of a shorter term or with mutual break clauses but declined to do so. Ultimately the tenant wants the security of the longer term on the basis that the court grants the maximum term that it can (15 years) replacing what had been a 25 year lease without break clauses.

154. The insertion of a tenant's break clause would not, unlike insertion of a landlord's redevelopment break clause, result in (a) the clause only being operable for particular good reasons, being the reasons said to underly the need for the clause and which (b) could be tested by taking the matter to court in seeking a new tenancy and seeing if grounds of opposition were made out.

155. The insertion of a tenant's break clause coupled with a higher rent might be capable of compensating a landlord for the resulting financial damage to his reversion flowing

from the break clause, but that mechanism would not be a positive factor for inserting a clause, if there is no other good reason for doing so. The factor is apparently neutral because (on the tenant's own submission) equally the tenant's financial position can be compensated for if a break clause is not included, by setting a lower rent.

156. Considering all relevant factors, it is not fair and reasonable to include a tenant's break clause in the proposed lease. Accordingly, the new lease should not contain such tenant's break clause as is sought.

Issue 2: Proposed Alteration to the Tenant's covenant to contribute to repair and maintenance costs of Access Road

157. Clause 3.33 of the 1996 Lease is as follows. The tenant argues that the words that are underlined should be removed from the clause as it appears in the draft new lease (the Access Way is what I have referred to in this judgment as the Access Road).:

> "*To pay to the Landlord on demand as rent 33.3% of the reasonable and proper cost of the maintenance lighting and cleaning of the Access Way save that if at any time the Landlord considers it fair and reasonable that the tenant should pay a different percentage of the said cost the Landlord may from time to time apply such other percentage as the Landlord considers fair and reasonable in all the circumstances".*

158. It will be noted that the underlined words envisage not just an increase but also a decrease in the one-third contribution to the overall costs. I did not understand it to be contested that the demand for the contribution to the cost could only arise if relevant costs were actually incurred and that the tenant was not liable under the covenant to pay the theoretical costs that would be incurred if the cleaning, maintenance etc were to be carried out if the same were in fact not carried out.

159. The 1996 Lease also contains terms conferring relevant rights on the tenant and imposing relevant obligations as regards the Access Road on the landlord.

160. First, the 1996 Lease demises the Premises together with the rights set out in Schedule 2 and except and reserved as set out in Schedule 3 (see clause 2.1, 2.1.1, 2.1.2, and 2.1.3). Schedule 2 contains the following right at paragraph 5:

> "5. *A right at all times and for all purposes over and along the Access Way".*

161. Secondly, by Clause 5.2 of the 1996 Lease the landlord covenants as follows:

> *"5.2 To maintain light and clean in a good and workmanlike manner, until adopted as a public highway maintainable at public expense the Access Way."*

162. As I go on to explain, at the time of the 1996 Lease the landlord owned the freehold of both the Premises and the Access Road. However, not long after the grant of the 1996 Lease, the landlord, Wallis, disposed of the freehold of the Premises to a company called Crystal Securities Limited ("Crystal"). However, Wallis retained the freehold to the Access Road. As part of the transfer, Wallis granted an easement over the Access Road to the new freehold owner of the Premises, Crystal, and extracted a covenant that Crystal would pay one-third of the reasonable cost of maintenance,

lighting and cleaning of the Access Way plus a covenant not to dispose of the freehold without obtaining a deed of covenant from the new owner in the same terms as regards (a) a payment of the one third costs and (b) a promise not to dispose of the freehold without obtaining like covenants from the new freehold owner.

163. In substance, the Claimant's submission is that as the landlord can only be liable for a third of the relevant costs then the same should apply to the tenant and the covenant to contribute to the relevant costs should be limited to a one-third liability in respect of the entirety of such costs and there should be no mechanism to change that.

164. The transfer of the freehold reversion of the Premises to Crystal was effected by a transfer dated 3 July 1996, just under three months after the grant of the 1996 Lease.

165. Freehold title to the Premises was conveyed by the transfer together with the rights set out in the First Schedule. Paragraph 1 of the First Schedule provides as follows:

> *"1. Subject to the payment by the Purchaser of the contribution towards the cost of repair and maintenance thereof in accordance with paragraph 3 of Part 11 of the Third Schedule a right of way at all times and for all purposes connected with the use and enjoyment of the property"*

166. Paragraph 3 of Part II of the Third Schedule contains a covenant by the purchaser (Crystal) as follows:

> "3. *To pay to the Vendor on demand one third of the reasonable cost of the maintenance, lighting and cleaning of the Access Road including all drains serving the same*"

167. Paragraph 5 of Part II of the Third Schedule contains a covenant by the purchaser (Crystal) as follows:

> "5. *Not to dispose of the freehold of any part of the Property without obtaining from each Purchaser a Deed of Covenant in favour of the Vendor or its successors in title to the Retained Land in a form to be approved by the Vendor or its said successors in title obliging any such Purchaser to covenant in the terms of this paragraph 5 and to contribute the proportion relevant to the land sold of the one third contribution towards the reasonable cost of the maintenance, lighting and cleaning of the Access Road referred to in paragraph 3 of this Schedule."*

168. The Fourth Schedule contained a covenant by the vendor (Wallis) as follows. (as regards the proviso, the envisaged transfer to Kwik Save Group plc has not occurred):

> "*Subject to payment by the Purchaser and its successors in title of the sums referred to in paragraph 3 of Part II of the Third Schedule the Vendor shall keep the Access Road in good and substantial repair and condition including all drains serving the same provided that if the Access Road shall be transferred to Kwik Save Group Plc and the Vendor shall procure that Kwik Save Group Plc shall enter into a deed of covenant with the Purchaser or its successors in title (as the case may be) in the terms of this Fourth Schedule*

> *then as from the date of such transfer (or the date of the said deed of covenant if later) the Vendor shall have no liability under this covenant."*

169. The freehold to the Access Road is registered in the name of Wallis (or was as at 15 February 2023, the date of the official copy of the register, and I assume there has been no change since) under Title No. TY296885. That title sets out the relevant real property rights created by the 1996 transfer. It also appears that in 1994 there was an agreement conferring on Kwik Save Group plc an option to purchase the Access Road. The register also records an agreement in 1997 between Crystal, Wallis and Kwik Save Stores Limited containing an option to purchase the Access Road.

170. I am told that Wallis no longer appears as a live company on the records of Companies House and that it is believed to have been dissolved over 20 years ago. The Access Road has not been adopted as a public highway maintainable at public expense.

171. There is, perhaps surprisingly, no clear evidence one way or the other as to whether or not Resham has entered into a covenant as successor in title to Crystal as envisaged by the 1996 transfer. At the end of the day, as I shall come on to explain, it does not in my judgment matter what the precise position is.

172. As regards the proposed New Lease the parties have agreed that the absolute covenant which was clause 5.2 of the 1996 Lease should be modified to become a "use reasonable endeavours" obligation. As the landlord is not the freehold owner of the Access Road the covenant should not be absolute. The wording that the parties have agreed is as follows:

> "*5.2 The Landlord will use reasonable endeavours to procure that the Accessway is maintained lit and cleaned in a good and workmanlike manner, until adopted as a public highway maintainable at public expense."*

173. As I have said, the concise submission of Mr Walker is that as Resham, at most, could become liable for one-third of the relevant costs (pursuant to any covenant it has entered into further to the 1996 transfer), then there should be no ability in Resham (under the proposed new lease) to alter the liability of the tenant to pay one-third of the overall relevant costs. (It may be that Resham is under no liability to pay anything towards the relevant costs because either it may not have executed a further deed of covenant as envisaged or, given the apparent non-existence of Wallis, there may be no person to enforce any such covenant).

174. In my judgment, the short answer to this point is that the reasonable endeavours clause could result in the landlord falling under a relevant monetary liability not as a result of the current freeholder of the Premises (if any) passing on the cost which it had to pay the freeholder of the Access Road but as a result of the landlord otherwise using reasonable endeavours to clean, maintain and light the Access Road.

175. The landlord would undoubtedly have the right to abate a nuisance in terms of interference with the easement. His covenant in the lease goes beyond that. However it is possible to see circumstances in which the landlord might take steps to acquire

and succeed in acquiring the freehold to the Access Road (alone or with other surrounding landowners) or obtain permission to carry out the relevant works from the freeholder of the Access Road (there might for example by discussions with the relevant Crown representatives if title has reverted to the Crown as bona vacantia). In such scenarios, the landlord could well incur a monetary liability in carrying out the relevant matters and that liability might be more than a third of the relevant costs (suppose for example that the agreement reasonably reached is that the freeholder of the Premises should be liable for more than a third, whether because of the specific use of the Access Road by the Premises compared with the other surrounding piece of land or for some other reason). Equally, it might be less than a third.

176. The tenant is protected under the current clause as negotiated in 1996 that the landlord can alter the proportion if it considers it "fair and reasonable" to do so. Again, I did not hear extensive argument on this point but understood it to be accepted that there was not a complete discretion that could be exercised in a wholly arbitrary manner.

177. In circumstances where I do not accept the premise of the argument for changing the relevant tenant obligation, namely I do not consider that it is clear that the landlord could never incur a liability exceeding one third of the relevant costs, it seems to me that there are no grounds for changing the existing position in the respect sought by Kwik-Fit.

178. It also seems to me wrong to shift the relevant risks in this respect to the landlord. Compensation, in terms of an increased rent, would only be capable of being shown to be full compensation in the event that the risk eventuated, I consider that the situation is akin to that in *O'May* (though there the attempt was to shift the relevant risk to the tenant and the question was whether a lower rent would adequately compensate the tenant). I accept that in *O'May* there was expert evidence on this point which is lacking her. However, in my judgment the point does not need expert evidence to be made out.

Issue 4: The Rent

The Experts Written Documents and final positions

179. As I have said, Mr Richard Hardy gave expert evidence on rent for the Claimant and Mr Bloomfield gave expert evidence on rent for the Defendant.

180. There are a number of reports, answers to questions and joint statements. It is easiest if I list those in date order (where two documents have the same date I give Mr Hardy's document first). The further reports and statements have largely come about by reason of further information, largely further comparables, becoming available. They are as follows:

(1)	Mr Bloomfield's 1st Report	14.12.22
	(amended)	(13.01.23)
(2)	Mr Hardy's 1st Report	06.01.23

(3)	Mr Hardy's responses to Mr Bloomfield's questions	[undated]	
(4)	Mr Bloomfield's responses to Mr Hardy's questions	[undated]	
(5)	Mr Hardy's Note ("Mr Hardys 1st Addendum")	20.03.23	
(6)	Experts' Joint Statement ("1st Joint Statement")	20.03.23	
(7)	Mr Bloomfield's 1st Note ("Mr Bloomfield's 1st Addendum")	20.03.23	
(8)	Mr Bloomfield's 2nd Note ("Mr Bloomfield's 2nd Addendum")	28.12.23	
(9)	Mr Hardy's 2nd Addendum to his report	23.01.24	
(10)	1st Addendum to Joint Statement ("2nd Joint Statement")	05.02.24	
(11)	Mr Hardy's 3rd Addendum to his report	04.03.24	
(12)	2nd Addendum to Joint Statement ("3rd Joint Statement")	15.03.24	(Mr Hardy 12.03.24 and Mr Bloomfield 15.03.24)

181. Unfortunately some of these documents did not contain (a) the expert's statement of truth in the form provided for, and as required, by CPR PD 35 paragraph 3.3 nor (b) the statement as to understanding of and compliance with their duty to the court and awareness of the requirements of CPR Part 35, the Practice Direction and The Guidance for Instruction of Experts in Civil Claims as provided for, and required, by CPR PF 35 paragraph 3.2(9).

182. However, it was clear that in fact each expert was aware of the relevant matters and they confirmed in oral evidence the matters that should have been verified in writing. To the extent necessary I waived any relevant faults in the reports. Nonetheless, I express my disappointment that such waiver was necessary and that the matter had not been remedied at an earlier stage of the proceedings. There appears to be all too often an approach to the placing of evidence before the court (whether expert or by way of witness statement) which treats the formality requirements of the CPR regarding evidence as being technical and not necessary to be observed. Any such attitude should be dispelled. The requirements are there for very good reasons. They are ignored at the peril of the evidence not being admitted or other sanctions being applied.

183. I should add that for most of the time the Defendant was acting in person through its director Mr Mander. Whilst I understand that he may not have had the knowledge of a solicitor as to how legal proceedings are conducted and the requirements of the rules as regards expert evidence, it was his duty to find out what such rules are and the CPR are clear upon the point. Further, one would expect that Mr Bloomfield would himself be aware of the relevant requirements and/or take steps to ascertain what they are.

184. I turn to the main conclusions of the experts. The experts are agreed as to the square footage. The current rent is a passing rent of £35,000 equating to £7.52 per square foot. The experts' respective final positions/opinions on market rent can be summarised as follows:

Mr Hardy	£5.90 per sq ft	£27,400 (rounded)
Mr Bloomfield	£10 per sq ft	£46,250

185. Each expert takes the approach of finding comparables and then making adjustments for differences between the comparable and the Premises. There are also points of principle that arise as regards the appropriateness of making adjustments either at all, particularly as regards (a) physical characteristics of the Premises; (b) visibility; (c) effect of length of term; (d) effect of clause for contribution to Access Road. Because of the manner in which the evidence has developed over time, I consider the evidence from that perspective.

The Law

186. I did not detect a difference between the parties as regards the relevant law and principles to be applied.

187. As I have said, the ultimate test is one of what the market rent would be, subject to certain assumptions set out in s34 of the LTA 1954. S34 provides (so far as relevant to this case):

> ***"34. Rent under new tenancy.***
>
> *(1)The rent payable under a tenancy granted by order of the court under this Part of this Act shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the court to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded—*
>
> > *(a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding,*
> >
> > *(b) any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business),*
> >
> > *(c) any effect on rent of an improvement to which this paragraph applies,*
> >
> > *(d)….*[licensed premises]
>
> *(2) Paragraph (c) of the foregoing subsection applies to any improvement carried out by a person who at the time it was carried out was the tenant, but only if it was carried out otherwise than in pursuance of an obligation to his immediate landlord and either it was carried out during the current tenancy or the following conditions are satisfied, that is to say,—*
>
> > *(a) that it was completed not more than twenty-one years before the application to the court was made; and*
> >
> > *(b) …*

(c) ...

(2A) [relevant to s34(1)(d)]

(3) Where the rent is determined by the court the court may, if it thinks fit, further determine that the terms of the tenancy shall include such provision for varying the rent as may be specified in the determination.

(4) It is hereby declared that the matters which are to be taken into account by the court in determining the rent include any effect on rent of the operation of the provisions of the Landlord and Tenant (Covenants) Act 1995.

188. As regards the legal principles underlying the application of s34 of the LTA 1954 by the Courts, I detected no disagreement between the parties or the experts and the latter appeared to be applying, or seeking to apply, the relevant legal principles. I was referred to the relevant section of *Reynolds & Clark* which I have well in mind. Some of the specific points drawn to my attention are set out below.

189. Although s34 LTA 1954 refers only to a willing landlord, it is trite law that the hypothetical letting referred to in that section must be assumed to be between two willing parties, that is a willing landlord and a willing tenant and that this derives from the concept of a letting in the open market rent (*Dennis & Robinson Ltd v Kiossos Establishment* [1987] EGLR 133 (see *Reynolds & Clark* at 9-030)). Further, the hypothetical tenant is a willing one "not an importunate one" (see *FR Evans (Leeds) Ltd v English Electric Co Ltd* (1987) 26 P&CR 185 at 186 and *Reynolds & Clark* at 9-031).

190. In *GREA Real Property Investments Ltd v Williams* (1979) 250 EG 651 (see also *Reynolds & Clark* at 9-015; 9-051; 9-070), Forbes J referred to the concept of comparables:

> "*It is a fundamental aspect of valuation that it proceeds by analogy. The valuer isolates those characteristics of the object to be valued which in his view affects the value and then seeks another object of known or ascertainable value possessing some or all of the characteristics with which he may compare the object he is valuing. Where no directly comparable object exists the valuer must make allowances of one kind or another, interpolating or extrapolating from his given data. The less closely analogous to the object chosen for comparison the greater allowances which have to be made and the greater the opportunity for error.*"

191. I was also referred to *Barrett (W) & Co v Harrison* (1956) and see *Reynolds & Clar*k at 0-095, including the observation of Hamilton J that "*the ideal comparable hardly ever exists*".

Tenant's improvements

192. There was at one point some question as to whether or not there were improvements falling within s34(1)(c) . I deal with this issue later in this judgment when dealing

with the question of the deductions or discounts that Mr Hardy considered were appropriate to be made to the figure for rent that he derived from comparables and which he took as his starting point.

Existing passing rent

193. The rent under the 1996 Lease was set at £35,000 p.a. (equivalent to £7.52 per sq ft). The 1996 Lease contains upwards-only 5 yearly rent reviews, the first being 2001 and further reviews in 2006, 2011 and 2016.

194. I was addressed, by both sides, on the basis that on a rent review under the terms of the 1996 Lease the effect would be to arrive at a market rent. It was not suggested that the rent on a rent review would be any different to that of market rent as to be determined on the relevant legal principles applicable under Part II of the LTA 1954.

195. Mr Hardy's evidence is that:

> "t*he lessor has been unable to justify increasing the rent at each fifth anniversary of the term i.e. for each scheduled rent review, primarily as the passing rental at each review remained in excess of the effective rental value based on available rental evidence at the time of each rent review". (Mr Hardy's Report paragraph 5.23)."*

196. It is submitted by Mr Walker that this is evidence that the current rent under the 1996 Lease "remains too high", that is that the property is "overrented".

197. I reject Mr Hardy's evidence on this point that an inference of current "overrenting" can be made from the non-exercise of the rent review provisions in this case. First of all, other than inference from the fact of non-exercise of the right to require a rent review, he had no material before him (or none that he revealed) to support his opinion that the lessor had been unable to justify increasing the rent at each rent review. The only relevant evidence available to him was that the rent review had not been triggered. He could not have known what considerations the landlord took into account. He did not know what available rental evidence the landlord had access to at the relevant times nor what expert evidence (if any) the landlord relied upon in not triggering rent reviews. Further, to say that the landlord "had been unable to justify" suggested that it had tried to and failed or that a situation had arisen whereby it was called upon to justify and had failed to do so.

198. Further, non-triggering of a rent review clause is, in my judgment, logically consistent with, at the least, either the current rent being in excess of market rent OR it being at about market rent. Of course, a rent review might not be triggered for other reasons too (such as failure to remember to do so and so on).

199. The main evidence regarding the factual circumstances in which the passing rent had remained at its initial level and no rent reviews had been initiated by the landlord came from Mr Mander. As I have mentioned the 1996 Lease contained a five yearly rent review provision. There was therefore potential for Resham to trigger rent reviews in 2001, 2006, 2011, 2016.

200. Mr Mander was cross-examined as to why Resham had not triggered rent reviews in any of these years.

201. As regards 2001, the rent review mechanism needed to be triggered in about April 2001 but Resham only acquired the property in July 2001. Mr Mander asserted ignorance as to what had happened prior to Resham's acquisition and as to why any rent review was not triggered. I found this evidence less than convincing. In acquiring a freehold such as this I would have expected due diligence to have been carried out and a key issue would have been the obtainable rent. Either from its own researches at the time and/or from enquiries made of the previous freehold owner, I would have expected Resham to have had a good idea as to the financial position and (for example) whether an opportunity had been missed such that there was a likelihood of an increase in rent at the next review. However, I am unable to reach any conclusion as to what Mr Mander and/or Resham did know or believe about rent levels under the 1996 Lease compared with what was achievable on a rent review as at 2001.

202. For the reviews in 2006, 2011 and 2016, Mr Mander asserted variously that the family were distracted by the death of his father in 2004, that there had been a focus on trying to sell properties worth £4 million and/or that Newcastle was a long way away and there may not have been focus on the Property. Accordingly the "decision" not to trigger rent reviews was not a positive decision based on a consideration of the Premises, the 1996 Lease and evidence as to whether or not the rent review would achieve a higher rate but rather was simply a result of failure to consider the matter properly. The answers given by Mr Mander were unpersuasive. This was no mere family company with a few properties. It was a substantial property owning company where its business was owning freeholds that were let out and so the company's income stream was from rents. Mr Mander confirmed that the company owned some 40 to 50 properties, it had in-house staff and used experts on an ad hoc basis.

203. I am satisfied that Resham did keep the position under review and that deliberate decision were made not to trigger the rent review clauses on the basis that it was considered that a higher rent would not be achieved or was not sufficiently certain as to make it commercially worth while triggering the rent review.

204. Mr Fletcher submits that the passing rent may be "some evidence" of where the market stands. This is on the basis that although the evidence, he says, does not go so far as to demonstrate that Resham regarded the position as being one where, and/or that it knew that, the current rent was in excess of market rent, it might lend some support to the permissible inference that during the relevant period rents were static and certainly, and in any event, that by 2016 the passing rent reflected market rent. In other words, that the inference can be drawn that in 2016 no higher rent would be likely to be achieved on a rent review. In this respect he points also to the fact that Halfords took nearby premises in 2013 at the same rent per square foot as Kwik-Fit had of the Property in 1996 (£7.52 psf).

205. As at 2016, the evidence about the rent reviews suggests that rent achievable under the rent review mechanism was no more than the passing rent of £7.52 psf. Whether or not the rent achievable under the rent review mechanism was considered by Resham to be lower (and if so how much lower) and on what expert evidence this view was taken (there was apparently no disclosure given by Resham in relation to

rent reviews) and whether the position had changed by 2021 or now, seem to me matters that drive to a conclusion, which I reach, that the inference to be drawn as to the current market rent in 2024 is uncertain. In any event the weight to be given to the evidence regarding the passing rent and the non-implementation of rent reviews would be very low indeed.

206. What the position was in 2016 does not assist me very much with the position as at 2024. I was not taken in this context in detail through evidence dealing with changes in the overall market for rent for this sort of property between 2016 and 2024. As a generality rents in the area may be seen to have risen by some 11% or so but this is another straw in the wind.

207. According to Mr Hardy, his opinion of now market rents, based to a large extent on lettings on the Glover Industrial Estate, which I shall come on to, altered significantly from that which he gave based on an open market letting of unit 6B Glover Industrial Estate on 30 June 2023 when a further open market letting of unit 6D completed on 24 March 2024 (for example, his Opinion on one basis altered from £6.65 psf to to £5.90 psf based on this one new letting). This rather confirms my view that it is unsafe to draw inferences as to (a) the market rent being at or near the passing rent in 2016 and (b) such market rent must be treated as having risen by some 11% or so since then.

208. My conclusion as regards overall inferences, is that I am unable to conclude either that the current rent is any reliable evidence of market rent or, on the other hand, that it is evidence that the Property is overrented such that £7.52 exceeds the now market rent. As said, if I am wrong and either inference should be drawn, I consider that the weight to be given to such conclusion would be very low.

Rateable Value

209. The rateable value of the Premises at various times were as follows:

(1) 01.04.17 £38,250 (valuation date 01.04.15) at a base rate of £85.

Following an appeal, the rating list was altered from 22 August 2023 so that the assessment became

£34,000 based on a Base Rate of £80, in line with that for that applied to the nearby Halford unit.

(2) 01.04.00 £21,750 (valuation date 01.04.98);

(3) 01.04.95 £18,000 (valuation date 01.04.93)

210. The experts were agreed that the rateable value gave no real indication of a market rent. This approach is reflected in *Reynolds & Clark* paragraph 9-025 where the lack of reliability of values of rating shown in the valuation list for the purposes of ascertaining market value rent is confirmed.

211. Mr Bloomfield however suggested that, although in absolute terms the rateable value at any one time was not of assistance in determining market rent, the differential between the rateable value at one date compared with another date was of some

assistance in confirming any percentage change in rents (including market rents) in the period. He also considered that different rateable values at different locations might be a useful indicator of a differential in market rents between properties at the two locations. However, even on this limited basis, it seems to me that great care has to be applied in assuming rateable values can be correctly compared as between different premises so as to give an idea of a proportionate difference in value of the two sets of premises. Rateable values may be set differently by different officers in different areas. Furthermore, as the history of the rateable value of the Premises shows, rateable values may be wrong (and may or may not be appealed). I note that even after the appeal regarding the Premises, Mr Hardy still asserts that the (revised) rateable value is wrong.

General Approach

212. Before I move to the issue of comparables, I deal with some preliminary issues.

213. The Experts were agreed that the approach to determining market rent should be based on comparables with the hierarchy of evidence, in order of priority, being:

(1) Open market lettings

(2) Arm's length lease renewals or rent review agreements;

(3) Expert determinations;

(4) Arbitrator's awards

(5) Lease renewals determined by the court.

214. The difficulty is that, in reality, the comparables are not great in number and there is a risk in setting too much store by one or two apparent comparables that may in fact be out of the norm for various reasons specific to those comparables and which reasons are not immediately ascertainable (e.g. because they depend on matters specific to one or other or both of the parties, which matters are not public).

Mr Hardy's approach

215. In this respect, Mr Hardy, as I shall explain, in his Report started by identifying a base rent (£ per sq ft) from looking at comparables in the fast-fit sector. He did not consider other sectors such as light industrial units or trade counter comparables. However, in later addenda to his report he did engage with trade counter comparables, which I shall come on to.

216. Having determined what he considered, in his opinion, to be a base rent, he then made deductions from that sum to reflect various matters.

217. Mr Hardy's opinion proceeded on the basis that the market rent per square foot would decrease if the term of the relevant lease were more than 5 years and there were no or fewer tenant break clauses then at five yearly interviews. As I have decided that the Proposed Leases should not have any tenant's break clause, when speaking to Mr Hardy's market rental figures I refer only to his assessment of the same with regard to

his opinion on the scenario of a 15 year term with 5 yearly rent reviews but no break option.

218. I should also explain, in reaching his "base rent" for a property, in cases where the remaining lease at any point where rent was fixed was longer than 5 years without a tenant's break clause within 5 years, Mr Hardy would increase the rent to equate the figure to what he said would be the rent for a 5 year term, which was his base figure. When extrapolating as to the market rent for the Premises, in the event the Proposed lease would be, as I have decided, for 15 years without any tenant's break clause he then deducted from the "base rent" to reflect the extent to which the longer period of the term of the Proposed lease was more than a 5 year period. This concept was referred to by Mr Hardy as "term overage".

219. In his Report, Mr Hardy reduced his assessment of the "base rent", derived from comparables (£6.90 psf), by 10% to reflect the uninsulated state of the roof and upper elevations. He then applied a further 2.5% reduction to reflect the two elements: lack of electrical lighting (disregarded as a tenant's improvement) and the tenant's obligation to contribute to the cost of the Access Road. That resulted in a figure of £6.04 psf (but on the basis of tenant only break options at years 5 and 10). As I have described, he then applied a further deduction for what he described as term overage (meaning a discount to reflect every year for which the lease exceeded 5 years with no tenant's break) resulting in a further 10% reduction to £5.44 psf.

Tenant's improvements

220. By the time of the 1st Joint Statement, the experts were, I am told, agreed that there were no tenant's improvements that fell to be disregarded (1st Joint Statement para 8). However, the position was not as straightforward as paragraph 8 of the 1st Joint Statement would suggest.

221. In the case of Mr Hardy, his agreement was in part on the basis that, even if some works may have been carried out prior to the tenancy being granted (and therefore not falling to be disregarded under s34(1)(c)), they were now obsolete, of no value and did not enhance the value of the premises. Indeed, he went so far as to suggest that they may even represent a negative in financial terms on the basis (a) the relevant works were for the purposes of a fast fit operation; (b) there is no market for such tenancies and (c) an alternative tenant would not be a fast fit operation and would remove the current fittings. However, in this respect, he ended up by not enhancing the rental value for fittings rather than decreasing his assessment of market rent.

222. As a separate matter, however he left to the court the question of whether lighting at the premises (in respect of which he now said he had discounted market rent by 1.25%) was or was not a tenant's improvement and gave alternative market rents depending on resolution of that issue.

223. In his Third Addendum, without explanation, he simply put forward a valuation for market rent on the basis that there were no tenant's improvements falling to be disregarded (i.e. they were to be capitalised) but without explicitly explaining why.

224. Although it was not clear to me that Mr Hardy accepted (at least until his Third Addendum) that the lighting at the Property should be rentalised and not ignored as a

tenant's improvement, both Counsel addressed me on the basis that that was his position and that that was the basis on which I should proceed. By the time of the 1st Joint Statement, Mr Hardy was prepared to consider that the 2.5% reduction he had applied in respect of lack of electrical lighting and tenant's obligation to contribute to the costs of the Access Road might be adjusted to become 1.25% (to reflect the tenant's obligation to contribute to the costs of the Access Road), there being no reduction for the lighting installation if it could be shown and the court determined that the lighting installation did not represent a tenant's improvement. This would have increased the rental value from £5.44 psf to £5.51 psf. (see Mr Hardy's 1st Addendum).

Mr Hardy's subsequent adjustments to his valuation

225. By the time of the 2nd Joint Statement and Mr Hardy's 2nd Addendum, Mr Hardy was focussing on comparables of lettings of trade counter/light industrial units on the adjacent Glover Industrial Estate, Spire Road, Washington and three lettings achieved there of Units 6B, 6C and 6D (the "Glover Units"), all of which had been relied upon by Mr Bloomfield. Mr Hardy had, at the time of the First Joint Statement made comments on these[1] (and other) comparables relied upon by Mr Bloomfield but had not as such descended to any detail as to whether he would accept such as being comparables and if so how he would seek to adjust the relevant figures so as to make them applicable to ascertainment of the market rent for the Premises.

226. By the time of his Second Addendum he considered that there should be a rental adjustment of -5% to reflect the fact that the units had, but the Premises did not have, insulated roof and elevations; a -2.5% reduction to reflect the fact that the Glover Units were let with heated status whereas the Premises were not; a -2.5% reduction to reflect the fact that the Glover Units had a 6 meter eaves height rather than a 4.1 eaves height as at the Premises and a -1.25% deduction in respect of the tenant's maintenance obligation regarding the Access Road. Overall this resulted in a -11.25% deduction being applied to the rents of the Glover Units. With a further reduction in respect of term overage, this resulted in adjusted rents, derived from the rents achieved at the Glover Units, of between £5.12 and £5.83 psf. His overall valuation was that the market rent under the Proposed Lease should be £6.56 psf (if lighting was a tenant's improvement) and £6.65 if it was not.

227. The 3rd Joint Statement (and Mr Hardy's 3rd addendum) deals with the position taking into account the letting actually achieved for Unit 6D of the Glover Units. Mr Hardy's revised market rents, (on the basis that the lighting system did not represent a tenant's improvement, falling to be disregarded) was that the market rent for the Premises was £5.90 psf (say £27,400 pa rounded down from £27,447).

Summary of Mr Hardy's Positions

228. In short, Mr Hardy's position regarding the appropriate market rent can be summarised as follows, assuming, as I have said that I do, that lighting at the Property should be rentalised and not left out of account as a tenant's improvement and acting on the basis that there are no break clauses, as I have decided:

[1] To the extent that they then existed or were known to exist.

Mr Hardy's Document	**Psf**	**Rent p.a.**
Report	£5.44 psf (£6.90 + adjustments to reflect no insulation (-10%); 2.5% (lack of lighting and onerous repair) say £6.04 psf. Then overage adjustment to £5.44.	£25,307 (rounded £25,300)
1st Addendum (rentalising lighting installation on basis it is not tenant's improvement) and taking into account 2 further properties which do not change original analysis	£5.51 psf	£25,600
1st Joint Statement (Having benefit of Mr Bloomfield's comparables)	£5.51 psf (£6.04 + overage adjustment: £5.51)	
2nd Addendum	£6.65	£30,936 (rounded £30,935)
3rd Addendum	£5.90	£27,447 (rounded £27,400).

229. Because of the way in which the evidence developed over time, I consider the expert evidence from that perspective.

Summary of Mr Bloomfield's position

230. Mr Bloomfield's consistent position was that the market rent for the Premises is £10 per square foot, £46,520 p.a.

The market and the economy

231. Before turning to Mr Hardy's comparables, I should indicate briefly the evidence regarding market conditions and the economy generally. The following is a brief summary but I have of course taken into account the full evidence on these aspects.

232. As regards the economy generally, Mr Hardy refers to the position as reported in about October 2022 but it is clear that things have not greatly improved and that the general position he reports and which also looked into the future is broadly the same.

233. As regards the roadside automotives servicing sector, Mr Hardy sets out in some detail the challenges facing the sector flowing from (among other things), the move to cleaner environmental options in the automotive industry; a dynamic and fast changing market and the need to adapt; the knock on effects of covid (including more home working with less car miles being used); the effect of the economy and economic conditions on the cost of living particularly relevant to the Newcastle/Sunderland demographic and on car ownership and use.

234. In this connection, I should say that a number of the points made by Mr Hardy about the service sector generally (as opposed to the local area) rely on the same sort of factors as were prayed in aid as to why there should be tenant's break clauses every 5 years and which as a generality, I considered did not impact on the Property and did not justify the change of terms to the proposed lease by insertion of tenant's break clauses. In short, many of the difficulties facing the sector as a generality do not impact upon this particular Property which should therefore be more attractive than many of the more traditional sites located in residential areas or in towns with limited surrounding size, parking and facing possible restrictions in terns of noise production and the like.

235. Mr Hardy also relied upon the demographics of the Washington area, seeking to show, in effect, economic depression and low living standards. In connection with the demographics of Washington itself again caution is required. As Mr Fletcher pointed out: (a) some of the statistics cover a much wider area than Washington itself and (b) the gloomy picture painted by some of the statistics is to some extent redressed by other factors such as the fact that it is regarded by the local planning authority as the driving force for industrial growth, it is well placed geographically and with good road links to the nearby major conurbations (and the A1), is apparently a suitable home for investment in developments and there are no major local demographic developments since 1996 in terms of major economic/workplace market conditions eg, closure of shipyards or pits. Further, care has to be applied when taking into account statistics. For example, lower real wages and living standards might indicate a situation where more older cars (requiring servicing and repairs) are retained, in preference to newer cars requiring less repair and maintenance and which may well be under warranty. To at least some extent Mr Hardy accepted this sort of point and that without further detailed evidence it was difficult to decide the precise impact of certain economic conditions.

236. Mr Hardy also deals with the position of the light industrial market for premises and points out the difference in growth of rents in Newcastle compared with Sunderland (which incorporates Washington).

237. Finally, there was hearsay evidence regarding the interest of main national participants in the sector.

238. Halfords has a nearby Washington depot (and with the acquisition of the National Tyre Service as a business, also a second unit). By email dated 28 October 2022, the Halford's Property Portfolio Manager, referred to the Washington depot as not having performed particularly well for Halfords, not getting out of the bottom quartile in the region and to an absence of speculative approaches anxious to acquire premises in the light of Halford's acquisition of National Tyres. This has to be weighed against the fact that Halford's did not exercise its break clause under its lease in 2023 and has continued to operate its (now after the acquisition of National Tyres) two units. Similarly, Kwik-Fit itself wishes to obtain a new 15 year lease of the Premises.

239. By email dated 28 November 2022, ATS estate department wrote to Mr Hardy saying that ATS had no representation in Washington and no desire to have a presence within the town. However it went on to say that the department was aware of the social demographics and noting that three of their national competitors already had a business presence, stated that they did not regard Washington as having the correct set of demographics to support a profitable ATS Unit. It follows however that if the Kwik Fit premises were available there would only be two national competitors in Washington and I am not satisfied therefore that the position is as cut and dried as Mr Hardy reports it in his report (where he simply asserts that ATS have no interest in the town but without referring to the important caveat that this is on the basis there are three national competitors there and that, in effect, ATS do not think it can support a fourth). I also note that ATS subsequently referred to the fact that it had a centre just over 7 miles away in Gateshead , so did not believe that there as any requirement in Washington but it is unclear to me (without cross examination) how absolute this position would be and how far the existing profile of operators within the Washington area is also a factor in the view that ATS has no current interest in the Washington Area.

240. F1 Autocentres wrote to Mr Hardy by email of 13 March 2023 confirming that they were no longer looking for premises in Washington. They had been looking to expand their operational area in the North East but this project "*was shelved early in 2022 when an alternative strategy of focussing on expansion within their core current operational area was adopted. There aren't currently any plans to extend their core operational area*".

241. Whilst I accept that the trading performance of the outlets of the main operators in the sector may not be the best in the country I reject any suggestion that there would not be a demand for the Premises, as a fast fit centre, on the open market. In particular, Kwik-Fit itself and Halfords (now with two units) have evinced an intention to stay and ATS's lack of interest seems in part based on the proposition that other national companies are already represented in Washington. Further, there is also the possibility of local and regional fast fit operators having an interest in the Premises.

Mr Hardy's comparables in his Report

242. In his Report, Mr Hardy relied upon 14 comparables. I have fully in mind the detail set out in his report and the comments of each expert in the Joint Statement. It is obvious that there are no recent open market lettings which, of course, would be at the top of the hierarchy of evidence.

243. I set out the comparables Mr Hardy relied upon in his report in the same order in which they are dealt with in the 1st Joint Statement. In doing so I adopt certain corrections later made by Mr Hardy. Mr Hardy relied primarily on the local/regional market relating to "fast-fit" style properties and expanding his geographic inquiry to a radius of 30 miles from Washington, given the paucity of evidence. I also set out the main points made by Mr Bloomfield in the 1st Joint Statement.

No.	**Property**	**Mr Hardy's rent figure (for 5 year term)**	**Description**	**Mr Bloomfield's comments in 1st Joint Statement**
H1.	Kwik-Fit Durham Road, Gateshead (rent review 20.03.22. Assumed term 10 years no break: £66,500 pa)	**£6.56 psf** Grnd: £6.25 psf 1st £4.01 Adjust + 5% overage = £6.56 psf	1930's/1950's two storey motor servicing garage. Limited carparking. 2007: 25 year lease. No breaks. Part of a large sale and leaseback disposal.	Older property (and larger) **£9.80** (adjusted) as below On basis of negotiations rent either £7.28 psf ground floor (on basis T correct to say upper floor was one third of value ground floor) and £6.68 psf (on basis Lld correct to say upper floor was 50% ground floor value). Taken as whole a compromise of £6.98, say £7 per sq foot and this agreed as fair assumption on facts by letting agent).

				No adjustment that rent for 10 yrs rather than 5 yrs. + 15% for Premises being more modern; +10% as Premises smaller and better size +15% as Premises have better parking and site area Therefore £9.80 psf as adjusted.
H2.	Kwik-Fit Unit 1, St Andrews Trade Park, Dragon Lane Durham (rent review) 1.11.21. £90kpa agreed as fixed increase (rent on review greater of market rent or fixed increase). £9 per sq ft.	£9.45 (adjusted 5% for 5 yr term overage)	Modern flagship depot, purpose built in 2016 15 year term from 01.11.16 . Ts break at yr 10.	Not comparable re significantly larger premises in different location and fixed rental increase so not evidence of market rent
H3.	Kwik-Fit Borough Road, Sunderland (lease renewal of part: 31.05.20)	£5.89	1950s building, mixed use commercial area on fringe town centre 31.05.20: 20 yr lease, Ts breaks years 5 and 10 Commencing rent: £5,89 psf	Not reliable comparable. -not straightforward arms-length transaction (Part of surrender agreement)

	20 year lease tenant's breaks end 5th and 10th years			-more ltd parking and site area and quieter and poorer location
H4.	Kwik-Fit Newport Road Middlesborough (rent review 19,09,29 to market rent, 15 yr term £5.05 psf	**£5.05** (Former car showroom, utilise din part as Kwik0Fit fast-fit outlet.	Modern roadside unit with showroom. Trade counter/quasi retail area, busy road, Insulated roof.	Car showroom and vehicle servicing depot in entirely different location and larger premises
H5.	ATS Western Approach South Shields Red Boo Standard Valuation 29.01.19	**£8.34 psf** (£7.95 psf +5% adjustment overage to reflect 10 year assumed term)	Modern specification, insulated roof, prominent position fringe of town centre.	Not reliable: not open market, not hypothetical rent review nor lease renewal negotiated and agreed or determined by court/arbitration. Main reason for valuation: enable internal transfer of freeholds within group
H6.	ATS Middlesborough Hub and Retail, Murdock Rd, Middlesborough RICS standards Red Book equivalent valuation	**£7.00 psf** Adjustment to reflect Top Rents PMA to £6.67 + 5% adjustment for 10 year term: £7.00	Modern style 1990s style steel portal farm unit Insulated roof. Established light industrial and trade counter location.	See No. 5 above. Also note Rateable value of £15,750 based on Base Rate of £35.

	29.01.19 £6.00 psf			
H7.	ATS High Street Wallsend RICS standards Red Book equivalent valuation 29.01.19 £6.00 psf	**£7.58 psf** Adjust for passage of time:£7.22 + 5% upward adjustment to reflect 10 year assumed term **£7.58**	1980s/1990s unit. Insulated roof. Visual prominence. Good residential density locality.	See No. 5 above. Also note rateable value £17,750 based on Base Rate of £55.
H8.	ATS Newton Park, Grange Heaton RICS standards Red Book equivalent valuation 29.01.19 £4.06 psf	**£5.13 psf** Adjust time change to £4.89 psf and +_5% for term overage to adjust assumed 10 year lease		See No 5 above. Also note rateable value is £41,000 based on base rate of £60.
H9.	Kwik-Fit, Sherburn Terrace ,Consett Lease renewal 15 yr lease 5yr Tenant's break options 3.56 psf	£3.96 psf Adjust passage of time	1990's style unit, insulated roof	Not comparable location. RV of £17,000 based on base rate of £31. Consett a small population (29,887 as at 2021 census)
H10.	Kwik-Fit Sunderland	**£8.25**	1990s style unit. Insulated roof, Wide	Evidence historic and unreliable esp

	Road, Gateshead Rent review 13.06.18 10 year lease from 15.3.13 no breaks £5.71 psf (unchanged since 2008)	Adjust passage of time to £6.87 psf + 20% adjustment to convert to 5 yr term: £8.25 psf. Overrented.	site frontage to Sunderland Road.	in light of 2022 rent review Durham Road.
H11.	Halfords Autocentre, Allison Court Gateshead Rent review 15.03.18 10 yr lease no TBOs. £11.78	£11.78	Retail hybrid Opposite Metro Centre	Not comparable based on retail rents
H12.	Kwik-Fit, Four Lane Ends, Newcastle Lease renewal 01.10.17 15 yr term T's option to break yr 10. £7.18 psf.	Adjustment for passage of time to £9.07 psf		Older 1950's style premises, limited site area and parking, Landlord unrepresented. Historic settlement.
H13.	Halfords Auto Centre Vermont Washington (Original Letting 02.12.13) 15 yr term: tenant break yr	Adjustment to rent to take account rent free period:£35k to £31,500 pa): **£7.53 psf**		Relied upon as a comparable in Mr Bloomfields Report. Adjusting for rent free period: £7.52 : virtually identical to rent

	10. £35,000 pa.			under 1996 Lease. Mr B's calculation of rent under rent review fixed by RPI is to £9.06 psf.
H14.	Kwik-Fit, Marine Avenue Whitey Bay Lease renewal 25.03.12 15 yr term + 5 yr TBO £5.85	£5.85 (2017 and 2022 rent reviews not actioned by landlord)	1950s/1960's unit overlooking junction in Town centre, Insulated roof.	Older style 1960's building limited parking and site area

244. In section 10 of his Report Mr Hardy explains that:

(1) his opinion that the starting point is a rent of £6.90psf for the Premises (before downward adjustments for overage and certain characteristics of the Property) is in line with and cannot exceed that for ATS Cargo Fleet Middlesborough (H6, £7.00 psf) which he regards as being in a parallel market locality.

(2) He distinguishes Kwik-Fit Sunderland Road, Gateshead (H3, £8.25 psf); Allison Court, Gateshead (H11, £11.58psf); ATS Western Approach (H5, £8.34 psf), Kwik-Fit Four Lane Ends (H12, £9.07 psf), Kwik-Fit Dragon Lane (H2, £9.45 psf) and ATS at Wallsend (H7, £7.58 psf).

(3) He then goes on to say that the Premises should command a higher rental than Durham Road Gateshead (H1, even though the latter may have the benefit of a higher residential density). That is up to date evidence (March 2022) based on a rent review.

245. Dealing with the points made in the last paragraph, my conclusions are:

(1) As regards ATS Middlesborough at (H6, £7psf), whilst I accept the Premises may command the same sort of level of rent as this example, I am not satisfied that the £7 psf assessment is very reliable for the reasons given by Mr Bloomfield. I do not need to resort to the difference in base rate for rateable value as I regard that also as being potentially unreliable, even on a comparative basis.

(2) As regards Kwik-Fit Sunderland Road (H3 £8.25 psf), I agree that the comparable is unreliable, which is the view of both Mr Hardy and Mr Bloomfield and I rely on the reasoning of both. The comparable does not assist me at all.

(3) As regards Allison Court, Gateshead (H11, £11.58), I agree that with both experts that this is not really a comparable and that no helpful conclusions can be drawn from it with regard to the current market rent of the Premises.

(4) As regards ATS Western Approach (H5, £8.34 psf), this is a red book valuation with an uplift to reflect general rent increases after the valuation date. I do not regard it as reliable or of much weight for the reasons given by Mr Bloomfield. I do not agree with Mr Hardy's conclusion that the (adjusted) rental valuation is a good guide and that because the ATS Western Approach property should command a higher rent than the Premises, it follows that the market rent for the Premises must be significantly below £8.34 psf.

(5) As regards Kwik-Fit Four Lane Ends (H12, £9.07 psf), I consider that this comparable is of some weight and would not dismiss it as Mr Bloomfield does. However, I also disagree with Mr Hardys assessment that this property is so superior to the Premises in terms of position, roadside frontage and density of population that market rent for the Premises must be a lot lower. I consider that geographic position in terms of prominence can be overrated. This sector is not primarily relying on impulse customers as they pass but, rather like supermarkets, is reliant on customers who want their product (or service) and will often research (by internet or even a maps search) where the centres convenient for them are placed. As regards population density again that can be overrated. Washington is only 4 miles from Gateshead and it may well be convenient for the travelling public to rely on a fast fit operation that they travel past or near rather than a city centre location where there is little space for parking. That is to some extent borne out by Mr Hardy's favourable comments with regard to Kwik-Fit Dragon Lane, within a retail park setting.

(6) As regards Kwik-Fit Dragon Lane (H2, £9.45 psf) the rent achieved is by way of a fixed increase on a rent review and not by reference to market rent and so the value of this property as a comparator is again limited. I do however regard it as of some help in assessing the likely upper limit of any market rent for the Premises, taking into account also the more attractive nature of the Dragon Lane premises.

(7) As regards ATS at Wallsend (H7, £7.58 psf), this is again in effect a red book valuation and of limited assistance.

246. As regards Durham Road, Gateshead (H1, £6.56), Mr Hardy sets out his opinion that the market rent for the Premises (assuming for the moment no deductions for overage) should be higher than that for Durham Road, Gateshead on the basis that the Premises are superior. Mr Bloomfield agrees. However, somewhat oddly Mr Hardy concludes that the starting rent for a 5 year lease for the Premises would be £6.04, which is lower than the figure of £6.56 which he alights upon for Durham Road. Mr Walker points out that in later documents Mr Hardy does arrive at a figure which is greater but that is with the benefit of further comparables.

247. At this point I should deal with the question of what the basic rent for Durham Road should be taken as being. Mr Hardy, as I have said, says that it is £6.56. However, Mr Bloomfield in his Note dated 20 March 2023, explains how the rent was negotiated. The first floor is not used and is regarded as having limited value. At the time of the review Mr Brodie for Kwik-Fit argued that no more than one third of the ground floor value should be applied to the 1st floor. On the basis of the rent agreed,

that would give a rent for the ground floor of £7.28 psf. The landlord's surveyor on the other hand argued that the first floor should be taken to have 50% of the ground floor value, on the basis of the rent in fact agreed that would result in the ground floor having a rental value of £6.68 per square foot. Mr Bloomfield suggests a midway compromise of £6.98, say £7 a square foot. That this is a reasonable basis of assumption that this was the basis of the agreement reached and that it is reasonable to apply this analysis has been accepted by the relevant letting agent.

248. I would accept Mr Bloomfield's reasoning and opinion on the "base rate" for the Durham Road premises. I deal below with his proposed uplifts to the rent of the Durham Road premises to reach a market rent for the Premises, he advocating for uplifts of 10% for the more modern and better building, 15% for the net size of the building and 10% for the better parking and surrounding area resulting in an overall uplift of 35%. I will consider these questions later in this judgment.

Mr Bloomfield's comparables in his Report

249. Mr Bloomfield went beyond comparables derived from car fast-fit centres to consider also trade counter type operators. It became clear that Mr Hardy ultimately did not demur for the proposition that the Premises might be suitable for trade counter type operators (though requiring further adjustments to rent) and that such lettings could provide suitable comparable evidence for the purposes of determining the market rent of the Premises under the proposed lease.

250. At the end of the day I was confused as to whether the light industrial/trade counter "comparables" were being used as examples of premises that a quick fit operator might use for quick fit purposes (which was certainly Mr Bloomfield's position with regard to at least one of the units), such that the comparable was approached on the basis that it was a building a quick fit tenant would be interested in (and prepared to pay for) or whether they were being used as examples of what a business with light industrial/retail counter needs would be prepared to pay for on the basis such business might also be prepared to rent the Premises. Certainly at one point the latter seemed to be Mr Hardy's approach because he referred to substantial changes that might be needed to be made to the Premises to accommodate a light industrial/trade counter user rather than a quick fit operation use. In this respect I am thinking of Mr Hardy's suggestion in the First Joint Statement of the need to infill vehicular access points to make the industrial unit/trade counter comparables of Mr Bloomfield, truly comparable.

251. In his Report, Mr Bloomfield provided nine comparables as follows:

No.	**Property**	**Mr Bloomfield's rent figure**	**Description**	**Mr Hardy's comments in 1st Joint Statement**
B1.	Unit 2, 2 Parsons Road	**£9.50** (£10 adjusted to	Building is similar to Premises: 1990 build	-Geographically better position

	Washington 04.10.22 Openmarket letting to Toolstation B8 Warehouse Use £10psf (Cannot be used for retail purposes but can be trade counter) 15 year term, tenant's breaks end of years 6 and 10.	take account of rent free period)	of steep portal frame construction, extensive glazing and brick and steel profile clad elevations and pitched roof. 4 individual units created from former car showroom. Prominent roadside position, access via an service road and communal parking.	compared Premises: more prominent site and other commercial premises nearby -Insulated roof at Unit 2 but not at premises -other changes would be needed at Premises to make it as attractive (eg elevational infilling work)
B2.	Unit 1, 2 Parsons Road Washington Open market letting 15.07.22 10 years, Ts break end of 5th year	**£9psf**		-Not relevant, an out-and-out showroom property -Significantly refurbished at significant cost probably by landlord -adjustment to rent needed to compare with Premises for geographical position and differences with Premises
B3.	Unit 3, 2 Parsons Road Washington 24.06.22 Open market letting Class E use	**£9 psf**		See comments on B1 and B2

	10 years, Ts break end of 6 years.			
B4.	Unit 6C Glover Industrial Estate Spire Road Washington Lease renewal 01.06.22 Industrial/ Warehouse use 5 yr lease	**£6.50 psf** Rent for 1990s unit in non prominent position on standard industrial estate		-Glover Estate is Washingtons premier location for light industrial and B8/trade counter uses: rent therefore higher than secondary industrial estates such as Hertburn where Premises are situated -More modern and superior light industrial specification including -Adjustment for type of building and geographical position required
B5	Kwik-Fit, Durham Road Gateshead See H1 above	**£9.80** **(**Adjusting £7psf: +15% (Premises are newer) +10% (Premises smaller size) +15% (better surrounding space and parking))		See H1 above

B6	18A/18B Parsons Industrial Estate Washington 09.11.21 Open market letting/Surrender and regrant of part 5 year term, no break. £7.15 psf	**£7.15 psf** (reflecting +15% uplift for yard/parking on previous rent for 18B negotiated in Nov 2020)		-fully refurbished including fully insulated roofs -may be unreliable as possibility tenant prepared to pay premium to acquire adjacent premises as special tenant
B7	Unit 7 Glover Network Centre 2020 new lease	**£6.50psf**		-details amount to hearsay and not substantiated -unclear re term -The Premises are inferior re uninsulated upper elevations and roof; in filling required to elevations if to be used as non fast-fit purposes and secondary locality
B8	Halfords Industrial Centre, Vermont See H13	**£9.06**	See H13	See H13
B9	Formula One Auto Centre 94. Otley Road	**£11 psf**		Rejected as a comparable for multiple reasons including: 1. Location (94

	Shipley 30.07.20 (Auto centre use)			miles away); 2. Modern design and build transaction; 3. purpose built with all modernised and maximised latest efficiencies 4. Location on high traffic flow dual carriageway; 5. May be overrented like Premises were in similar circumstances

252. In section 6 of his Report Mr Bloomfield sets out his conclusion that the market rent for the Premises is £10 psf.

253. In essence his key conclusion is that prominence is key leading to a large uplift and he relies on the £9.50 psf for Unit 2, 2 Parsons Road Washington (and as confirming importance of prominence, the £11 agreed for the Formula One Unit in Shipley compared with £6.17/6.87 psf for less prominent sites in Shipley).

254. He considers that the £9.50 for Unit 2, 2 Parsons Way should be uplifted (by about 5%) to £10psf as the market rent for the Premises to reflect: (a) self-contained rather than in terrace of similar units; (b) ample private parking and yard/circulation space.

255. The conclusion of Mr Bloomfield in his Report is that £10 psf is the market rent for the Premises. This is on the bases that (a) the Premises are sited in a prominent position with own-parking and a private yard area: this would lead to a significant uplift in market rent than when compared with standard industrial units not having such amenities; (b) the difference in rating assessments for Halfords Vermont (£80 psm/£7.43 psf) and Glover Industrial Estate (£55 psm/£5.11 psf) or the Armstrong Industrial Estate (£40 psm.£3.72 psf) bear this differential out; (c) that an own yard area commands an uplift in rent is demonstrated by 18A/B Parsons Road where the rate is £7.15 compared with £6.25 psf for Unit B alone with no parking, a 15% uplift (or on my calculations 14.4%); (d) prominence is key (relying on FOAC Shipley compared with the (non prominent) Acorn Park units and Unit 2, 2 Parsons Road (B1) (£9.50, the other units at the same location being in £9psf region) contrasted with

other industrial units in the Washington area that he deals with (rents £6.50 Unit 6C Glover Road).

Experts' positions 20 March 2023

256. I have already summarised the experts' positions on comparables taken from the 1st Joint Statement of 20 Match 2023.

257. In addition, Mr Hardy in his First Addendum provided additional figures for market rent of the Premises on the basis that lighting installations at the Premises were not a tenant's improvement and hence fell to be rentalised rather than ignored. He also corrected some errors in his Report and provided additional rental evidence which he says did not affect his Opinion. Finally, he gave some more evidence about the intentions of F1 Autocentres which I have dealt with.

258. As regards the extra evidence of the market this involved two properties as below:

No.	**Property**	**Mr Hardy's rent figure (for 5 year term)**	**Description**	**Mr Bloomfield's comments in 1st Joint Statement**
H15.	319, North Rd, Darlington Market Subletting:28.01.20 to Salvation Army 10 years No LTA 1954 protection A1 use. Stepped rent	£5.01	1950s/60s brick built showroom plus ancillary areas previously used as Kwik-Fit trye and vehicle servicing centre. Parking provision for approx.. 10 cars.	
H16.	106-122 Newport Way Middlesborough 09.06.21 Sub-letting of showroom at front by Kwik-Fit Sub-lease to	£5.79		

	Salvation Army for 8 yrs 100 days No LTA 1954 protection A1, B1, B2 and B8 use. Mutual break 19.09.24			

259. I do not regard these two examples as providing any useful comparable.

260. In his First Addendum also of 20 March 2023, Mr Bloomfield clarified some earlier evidence from each side. He also introduced some additional comparable evidence as follows:

No.	**Property**	**Mr Bloomfield's rent for premises**	**Description**	
B10	18C/D Parsons Industrial Estate, Parsons Road Washington 6 year lease £7.41psf A1 use. Stepped rent	£7psf (Adjust from £7.41 for rent free: £7.15psf Adjust for rent free period: £37,306 pa (say £37,306 pa) Adjust for rent review pattern (+1% pa for 2 years review from 3 years to 5 year pattern) £7.15psf (at	1990s industrial unit own gated yard/parking area	

		38,095 pa) (Referred to as being marketed in Report but later confirmed as per these calculations) Matches Unit 18A/B at B6		

Experts' Positions December 2023/January 2024

261. By his 2nd Addendum, dated 28 December 2023, Mr Bloomfield amended his employment details, (as from 1 December 2023) and confirmed the outcome of the rates appeal regarding the Premises. He also introduced two further comparables as follows which Mr Hardy dealt with in his 2nd Addendum (dated 23 January 2024) as also summarised in the table below.

No.	**Property**	**Mr Bloomfield's rent**	**Description**	**Mr Hardys comments in his 2nd addendum 23.01.23**
B11	Unit 6B Glover Industrial Estate, Spire Road Washington 30.06.23: Open market Letting 3 year term £8.54 psf	£8.71 (adjusted for notional 5 year rather than 3 yr rent review pattern) Confirms high rent: not change Mr Bs Opinion	Identical to Unit 6B see B4	Adjustment to 5 years should be – not + 2%. Therefore adjusted rent should be **£8.37** psf. Also adjust as follows for differences compared with Premises: (total 11.25%) Premises:

				Uninsulated roofs/elevations; -5%; Not heated: -2.5% Eaves height lower (4.1m as opposed to 6m) -Onerous maintenance provision re Access Way 2.5%;
B12	Former Croxdale Premises Bensham Road, Gateshead Open market letting to North East Auto Services 01.12.20 10 year term, no breaks	£10.37 psf (after adjustments re rent free period and for letting of shop unit to hairdresser)	Fast fit premises, 5 miles to NW of Premises Tenant agreed to replace existing fluorescent lighting with LED and carry out patch repairs to tiled workshop floor Similar age to Premises and like Premises on its own large and self contained site	Mr Hardy refers to eg -lower population and population density Washington compared Gateshead [Agreed in 2nd statement to be incorrect] -Croxdale is higher build specification: enhanced eaves (5.2m rather than 4.1m), insulated roof and eaves and benefit of heating

262. In his Second Addendum dated 23 January 2024, Mr Hardy deals with the new comparables put forward by Mr Blomfield in his second addendum of December 2023. He accepts that the Glover Road Industrial Estate letttings/lease renewals are particularly relevant when assessing market rent for the Premises, but subject to the valuation adjustments that he sets out being incorporated. He also produces further evidence of Halford's Autocentres position and that of ATS Euromaster, which I have already dealt with.

263. He also revises and updates his valuation of market rent of the Premises on the basis of a 15 year term with no break option of £6.65psf (£30,936 pa rounded to £30,935) (discounted from a figure of £7.51 applying where there are tenant's break options every 5 years).

264. Finally, he explains "term overage" in detail, which I shall revert to.

265. As regards the two new comparables introduced by Mr Hardy these are as follows:

No.	**Property**	**Mr Hardy's rent**	**Description**	**Mr Bloomfield's comments in Second Joint Statement**
H17	Unit 6D Glover Industrial Estate, Spire Road Washington Proposed lease renewal (26.03.24) 5 year Agent Analysis: £7.40 psf	£5.83 psf after adjustments plus overage adjustment	Modern 1998 Trade counter/light industrial specification, 6m eaves heated status, insulated roof and elevations	A subject to contract renewal and not reliable.

H18	Kwik-Fit Premises Victoria Street South Grimsby Lease renewal 21.12.23 PACT determination £29,500 pax Term 15 years + 5 year tenant breaks (but financial penalty on 1st break if exercised)	Not relied on for rent but more for (a) term with break clauses as being the norm and a discount on rent to reflect financial penalty on 1st Ts break (b) No extra rent for substantial hard surfaced area 3,162 sq ft.	Fast fit premises	Disagreement with points (a) and (b).

266. I deal with the various points raised by the 2nd Joint Statement later in this judgment.

Mr Hardy's Third Addendum and the Third Statement (March 2024)

267. In his Third Addendum, Mr Hardy updates the figures for Unit 6D, Glover Estate, which in turn now affects his opinion of the market rent of the Premises (previously he did not rely upon 6D in carrying out his valuation but introduced it so that the court was aware of potential "movement" in rents achieved for the Glover Estate). Mr Hardy's valuation on the basis of a 15 year term with no breaks is now said to be £5.90 (discounted from £6.65 psf had there been 5 yearly tenant's breaks).

268. He also relied upon confirmation from the agent that the rent of 6D for a 5 year lease was reduced when compared to the 6B rent which was for a shorter term (3 years) being more advantageous to the tenant.

269. As regards Unit 6D the experts' main positions are set out in the 3rd Joint Statement and are as follows:

No.	**Property**	**Mr Hardy's rent**	**Description**	**Mr Bloomfield's comments in Third Joint Statement**

H17	Unit 6D Glover Industrial Estate, Spire Road Washington Lease renewal (26.03.24) 5 year Agent Analysis: £7.40 psf	£5.83 psf after adjustments plus overage adjustment Primarily relied upon to show downward turn in rent since agreement of 6B	Modern 1998 Trade counter/light industrial specification, 6m eaves heated status, insulated roof and elevations	-Secondary evidence -market rent for Premises needs upwards adjustment for prominent position of Premises -apparent discount for 5 year term although not quantified: discounts may be appropriate for 3/5 year terms but not for 10/15 year terms -there is no evidence of discounts where the term is longer than 5 years and much evidence to the contrary

The expert evidence: discussion

(a) The Experts

270. The weight to be attached to Mr Bloomfield's evidence was said to be affected, such as to reduce its weight, by his lack of both geographic and relevant market experience.

271. Certainly, on the face of things, Mr Hardy was much better placed to give evidence about the local market than Mr Bloomfield. Mr Hardy has been with Gerald Eve since 2010 and his allocated geographical operating area extends to Newcastle , in the north, Leeds in the west, the coast to the east and North and North East Lincolnshire to the south. On the other hand, Mr Bloomfield has always been professionally based in London or the Home Counties and although having a national practice has necessarily had some, but only limited, experience of the North East. In Washington he has been involved in some retail businesses (and their premises) but no industrial or warehouse premises.

272. Ironically, there might be said to be a respect in which Mr Bloomfield's experience was wider than Mr Hardy. That respect relates to Mr Bloomfield's wider experience of acting on a nationwide basis across a wide range of sectors acting for both landlords and tenants, rather than, as is the case with Mr Hardy, being involved almost entirely in acting for tenants. This point is more relevant to independence and I deal with it below.

273. Further, Mr Hardy's relevant experience in the Washington area was also fairly limited.

274. I have come to the conclusion that at the end of the day neither expert's relevant evidence in this case really turned on or was affected by either having or not having local knowledge. The matters that they disagreed on were matters either derived from observation (such as "prominence") of a site or which were not matters particular to the local market (eg. term overage arguments). No criticism of either expert (or any submission that their evidence on a particular point is to be preferred) seemed to turn on local evidence or knowledge.

275. Separately, Mr Walker heavily criticised Mr Bloomfield for being partisan rather than independent and for arguing for a position rather than giving the benefit of his independent expert opinion. As regards this, I have already referred to Mr Bloomfield's email seeking information to support a (factual) conclusion that he had already reached. During cross examination there were also number of times when he referred to being "able to argue" certain positions which, in the context, showed to me that Mr Bloomfield was not so much giving me his independent assessment of market rent but of what he felt was properly arguable on behalf of the client who had instructed him.

276. As regards Mr Bloomfield's evidence, I regarded him as straying into partisan argument. In my assessment he would not argue a case that could not properly be argued, but he saw himself as an advocate rather than as solely giving independent and impartial evidence to the Court of his own independent opinion.

277. In my judgment, the same was also to some extent true of Mr Hardy. Mr Hardy's relevant experience is, as I understand it, largely acting for tenants and arguing (or negotiating) relevant matters in their behalf. That rather came to the fore in the manner in which he advanced his "opinions" and the manner in which his position developed.

278. As with Mr Bloomfield I regarded him as naturally advocating positions (which were entirely proper to positions to be taken) rather than candidly giving the court the

benefits of his independent expert opinion.

279. As regards both experts, the manner in which their evidence was, in my judgment, more advocacy than independent opinion, was to some extent demonstrated by their positions with regard to the effect of length of a lease on the rent. When arguing the issue of whether or not the proposed lease of 15 years should contain tenant's break clauses, Mr Bloomfield said that a lease with break clauses would financially damage the landlord's reversion (and by implication that this would be compensated for by a higher rent). However, this was the opposite of his position when dealing with the market rent of the Premises. He did not recognise Mr Hardy's term overage and said length of the term had no effect upon market rent. However, Mr Hardy's position was the reverse and again appeared to differ depending on whether he was dealing with the question of whether tenant's breaks should be included or what the market rent should be.

(b) Different types of premises as comparables

280. Initially Mr Hardy restricted himself to dealing with premises suitable for fast-fit premises. He did not consider quasi-retail trade counter rental levels at all. Mr Bloomfield did and, although in the First Joint Statement, Mr Hardy did not really engage with that evidence as being of relevance to the ascertainment of the market rent of the Premises he did subsequently do so and, indeed, accepted that such evidence was relevant.

281. In making "adjustments" to rental values it is, in my judgment, important to consider the underlying reason for using the starting comparable. As regards the consideration of trade counter premises, Mr Bloomfield sought to rely on the same in two slightly different ways, as I understood him.

(1) As a generality, he said that buildings adapted as automotive fast-fit centres would command a higher rent than premises that were used for and adapted to be sued as quasi-retail trade counters;

(2) He said that the Premises might be attractive to a potential quasi-retail trade counter operator. The rent that might be achieved on such a letting would therefore be relevant to market rent of the Premises. Alternatively, he was saying that, at least as regards some trade counter/industrial units, these would be of interest to a fast fit operator.

282. As regards (2), I can see that there might need to be adjustments made to the Premises (or the comparable premises) to make them suitable for use by a potential quasi-trade counter operator (or a fast fit operator) and that this should come into the equation when considering what rent might be achievable if the Premises or comparable premises were let out in the less usual sector and what adjustments therefore needed to be made to market and other rents achieved. However, it does not seem to me that the same adjustments would necessarily be made if comparing the rent achieved at one fast-fit centre with another fast-fit centre.

283. I turn to the issue of whether I agree with Mr Bloomfield that the evidence demonstrates that, as a generality, fast-fit centres will command a higher market rent than quasi retail tool shops.

284. As regards this, Mr Bloomfield's position became, in broad terms, that fast fit premises in prominent locations have a market rent that is higher than that for such light industrial units nearby.

285. Essentially, Mr Bloomfield relied upon the differentials in rent between (a) Halfords Vermont (H13;B8) (£7.53 psf) and lettings at the Armstrong Industrial Estate at £3.27 to £3.65 psf) and (b) Shipley West Yorkshire FOAC (B9) £11 psf and lettings at the Acorn Park Industrial Estate (between £6.17- £6.87 psf).

286. The first comparison, between Halford Vermont and the Armstrong Industrial Estate has the limitation that the Halfords site cannot be put forward as a typical market rent.

287. The second comparison of the Yorkshire premises is also of little assistance: the geographic location is far removed from Washington and it does not follow that even if there is that sort of rent differential in Yorkshire the same necessarily applies to Washington. Further, the comparables from Acorn Park are very limited in number from one industrial estate only. Further, they are derived from auction particulars for the sale of the freehold (detailing the leases of the units in question) but with limited detail and date back to 2013.

288. Further, as Mr Walker points out, these two examples have to be weighed against units on the Tonbridge Trade Park (relied upon by Mr Bloomfield on the separate question of term overage) where FOAC took a prominent corner unit for 15 years (no breaks) at £14.25psf and other lettings (in less prominent sites) but with five year breaks at about £12.56 psf (though again, the precise details are lacking).

289. I am not satisfied that Mr Bloomfield's point is made out on the very limited evidence before me.

Term Overage

290. I have referred to the concept of term overage above.

291. Essentially I understand ultimately the experts agree that, as a generality, a longer term with a tenant's break clause will (in Mr Bloomfield's words): add value to the tenancy and diminish the value of the reversion. As Mr Hardy puts it:

> "*a lessee is generally willing to pay a higher rent psf to benefit from a shorter lease term than a local market norm position. This is because a shorter term generally affords lesser liability for the tenant through reduced lease duration commitment. In short, the longer the lease term the more discount the tenant can expect to receive*".

292. However, this will only come to be reflected in the market rent, such that a discount can be applied to ascertain market rent, where there can be said to be a lease length "norm" as a starting point. Mr Hardy, in his Second Addendum, goes on to expand upon this as follows:

> *" "Term overage" is the standard industry terminology and approach to rental adjustment, which is to deduct or add 1% per annum to the rent being analysed reflecting whether the term for the property being valued is more, or less, than <u>the typical local market norm position</u>.*" (emphasis supplied)."

293. I accept that as regards general light industrial/trade counter units in the area the norm is 5 years or less and where longer in 5 year multiples with tenant's break clauses at 5 year intervals. As Mr Hardy says, in his Opinion the result is that the overage adjustment would be limited to the period up to the relevant break option. Mr Hardy also adopts a figure of 1% for each relevant year. I accept Mr Hardy's evidence on this point and which seems to gain some support from the comparison of the rents for unit 6D on the Glover Estate and that for Unit 6B (as confirmed by the agent dealing with the transaction)

294. However, whilst I accept his description of the "norm" for light industrial units/trade counter units as being in 5 year multiples (viewed at form the tenant's perspective and including, where necessary, 5 year tenant's break clauses), I do not accept that there is a five year term "norm" for quick fit premises, either nationally or locally. So much is, I think, shown by the evidence in this case of the comparables and examples used in connection with the cases on including break clauses or not in the proposed lease.

295. Mr Bloomfield accepted that there was a five year term norm for trade counter/industrial units but not in the automotive quick fit sector. He considered that there should be no rent adjustment for longer terms, without tenant's breaks, in the quick fit sector. I agree with him. This also seems to gain some support from the fact that the negotiation of the relevant lease of 10 years at Durham Road apparently did not involve any submission or argument on behalf of Kwik-Fit that as the term was for 10 years without a tenant's break there should be a reduction in rent by way of "term overage".

296. Mr Bloomfield, whilst in writing apparently agreeing that there would be a rent adjustment in the event that a lease of industrial/trade counter premises exceeded 5 years or that there was a longer period than 5 years before a tenant could break, he did not agree with Mr Hardy's 1% suggestion. Having heard him being cross examined on this point I was not satisfied that he had any convincing answer as to why Mr Hardy was wrong on the further points that he, Mr Hardy, said followed from the term being more than 5 years without the tenant being able to break and the 1% adjustment that Mr Hardy would make to a base rent of 5 years to reflect each year that the remaining length of a lease was beyond 5 years without a tenant's break.

297. The result is that my conclusion is that term overage is a concept which is to be applied, in the manner Mr Hardy describes, when considering lettings of the Premises on a light industrial/trade counter basis but not when considering them being let as an automotive quick fit unit.

Fast Fit premises: demand and comparables

298. As regards demand, for reasons that I have already given I consider that were the Premises to be vacant there would be demand for a letting of the premises for quick fit automotive use.

299. Essentially there are two most relevant premises which are physically comparable as being adapted to fast fit use. They are Kwik-Fit Durham Road, Gateshead (H1, B5) and the Croxdale Premises (B12).

300. As regards Durham Road, Gateshead the first question is the split between the first and ground floor rents. On this point, I prefer the evidence of Mr Bloomfield as set out above and consider that the starting point is £7 per square foot.

301. Mr Bloomfield considers that using Durham Road as a comparable, the rent for the Premises would be increased by 35% to reflect the more modern and better building (10%), the net size of the building (15%) and the better parking and surrounding area (10%). In my judgment this is excessive. I consider that the uplifts on the figure of £7 psf that I have referred to earlier, should be nearer 15% which results in a figure of about £8.05 psf.

302. Turning to the Croxdale premises, it is accepted that on the letting on a 10 year term without breaks from 1 December 2020, the rent equates to £10.37 psf. Mr Hardy relies on a downturn in the economy since 2020 and the different location of the Croxdale premises as requiring adjustment to this rent if it is to be applied to the Premises, however in his addenda he does not identify what that reduction (or what valuation adjustments) he says are appropriate. I accept that some adjustments should be made for the different location (though it is not that far away from the Premises) and for the better building at Croxdale (eaves height, insulation etc) as well as the tenant's obligation at the Premises to contribute to the maintenance etc of the Access Road. These matters were not as such addressed by Mr Hardy in any detail and in cross-examination he seemed unclear whether Croxdale was or was not in his opinion a comparable and he felt unable to identify what adjustments if any should be made to the Croxdale rent. I should add that in this respect it seems to me that the reasoning of Mr Bloomfield regarding a lack of insulation (at the Premises) and that this merits an adjustment of 3.5% to 5% of the comparable rent at Croxdale rather than the 10% initially put forward by Mr Hardy (as explained in the First Joint Statement) is more persuasive. I note that later Mr Hardy moved to a 5% figure regarding absence of insulation (see his Second Addendum). In my judgment a reduction of about 15% overall would be appropriate making the comparable about £8.82.

Industrial/trade counter premises

303. I bear in mind all the evidence before me on these types of unit. By the time of the trial the two key units under consideration were those on the Glover Industrial Estate, being recent market lettings in Washington. As regards these units it seems to me, as I have said, that the comparable could be put forward on two bases: first that a business seeking such a unit might be prepared to rent the Premises; the other is that the property is truly comparable and a quick fit operation might be prepared to rent it.

304. Mr Hardy seemed to start on the first basis as he pointed out that changes would need to be made to the Premises to make them fit for use as an industrial unit/trade counter premises. However, he then appeared to move from that position, at least in part, to apply adjustments by way of term overage and for matters which he considered made the Premises an inferior tenant's property (no roof/upper elevation insulation); lower eaves height and onerous maintenance provision for estate access road but not (for example), an adjustment to close up bay doors.

305. As regards 6B Glover Industrial, if viewed as a letting to an industrial unit/trade counter unit tenant, I agree with Mr Hardy's analysis that term overage applies and that on the basis of a 5 year lease the rent should be adjusted to £8.37 psf. (Mr

Bloomfield suggested that that base rent would be £8.54 but that, I think, is on the basis of considering the position from the perspective of a quick fit operator seeking to rent quick fit premises). From that figure Mr Hardy would have discounted the rent to reach a market rent for the Premises. The discount he would apply would be 5% for the Premises uninsulated roof and elevations; 2.5% for the eaves height and 1.25% for the maintenance contribution covenant. (In cross examination he agreed that there should not be a further discount of 2.5% in respect of heating or absence of it.) That amounts to a discount of 9% which would place the rent at about £7.79. On top of that he would discount the rent by a further 10% to reflect Term Overage (1% pa for each year the term is over 5 years). That would bring the rent down to about £6.78 psf. Mr Hardy's actual written opinion at the stage that 6B Industrial Estate was added as a comparable was a market rent of £6.56 for the Premises. In my judgment, Mr Hardy wrongly does not allow for any inflation to the rent by reference to the fact that 6B does have yardage which would be of value. That would serve to uplift the rent from the £6.78 psf I have referred to.

306. If however, as apparently per his second addendum, Mr Hardy was or may have been using the Glover Estate as a comparable which a quick fit operator might occupy (either directly or as being part of the sector of relevant potential tenants interested in the property and in effect setting the market rent) then it seems to me that the discount for overage should not apply which would bring the rent up to about £7.77 (starting with Mr Bloomfield's adjusted starting point of £8.54). With yardage the figure would be increased.

307. Mr Bloomfield's approach at least at some points was apparently not to consider the Premises from the point of view of a business looking to rent an industrial/trade counter premises. Rather, it was to consider how a fast fit operator might regard fast fit premises as attracting a premium over the market rent achieved for industrial/trade counter premises.

308. On this basis, Mr Bloomfield took the rent for Unit 6B on the Glover Estate and then uplifted it when treating such rent as a comparable for the purposes of the Premises. With an adjustment regarding the rent review period, he would have applied a figure of £8.71 psf. He denied that any discount was required for matters such as absence of insulation (as the premises would have the doors open all day). He also considered that there should be no discount for the covenant to contribute to accessway costs as there was no evidence that had been or would be called upon. He would also apply an uplift for the yardage at the Premises.

309. I am far from sure that Mr Bloomfield's analysis of the figures in terms of the Glover Industrial Estate rents is that helpful. In effect, it seems to be based on his overall argument that quick fit premises (to be used as such) will command a higher rent than industrial/trade counter premises and that, in part, that is because quick fit operations are in more prominent locations than industrial/trade counter premises which tend to be situated on industrial estates and where they are less prominent. Indeed, Mr Bloomfield went little further than identifying the rent for Unit 6B and saying that it confirmed his position: but without any real analysis of what features of the one over the other demonstrated or supported his opinion of a £10psf rent for the Premises. In my judgment, even on Mr Bloomfield's approach and given that a market rent supposes agreement between landlord and tenant, the fact that some premises are better (in terms of insulation/maintenance obligations) is a relevant factor to take into

account, just as yardage would be. I do not consider that it is correct to ignore differences such as insulation just because a particular tenant might have limited use for the same.

Issue 4: Conclusion

310. Considering all the evidence, giving more weight to the comparables which are relate to actual quick fit premises and more weight to recent lettings, my judgment is that the starting market rent for the Premises under the Proposed Lease is £8.44 psf. as an annual basis, and with a floor area of 4,652 that works out to a rent of £39,262.88 pa which I would round to £39,300.

311. This is about half way between the two market rents extrapolated by me from the Croxdale and Durham Road fast fit premises as I have discussed above. Those are the headline comparables but I have also given consideration to the other comparables deployed, subject to earlier comments in this judgment.

312. On the approach that the experts ultimately seemed to agree regarding trade counter/industrial units, that is that they were a direct comparable to the Premises and not taken into account on the basis that a tenant seeking those premises would take the quick fit premises to use as industrial/trade counter units, this figure seems consistent with my analysis of the appropriate market rent to be taken as a comparable (and adjusted) for the Premises. I also take into account that such comparables are less reliable as they are derived from buildings with a different specification and function.

Interim Rent

313. Both experts were agreed that the interim rent will be the same as the rent under the new lease (See 1st Joint Statement para.4). I see no reason to disagree with that analysis and accordingly so hold and order.

314. The commencement date for any interim rent is also agreed so I need make no determination in that respect.

Overall conclusions

315. The proposed lease should be for a 15 year duration or term with no tenant's break clauses.

316. The clause concerning the tenant's obligation to contribute to the costs of maintenance repair etc of the Access Road should remain as it is with the provision permitting it to be changed by the landlord.

317. The market rent under the proposed Lease (and the interim rent) is determined to be £39,300 pa.

318. The parties should seek to agree a draft order giving effect to this Judgment.To the extent that any matter cannot be agreed the draft should set out the opposing positions making clear what is not agreed and which party propounds which wording. It may be that if there are matters which are not agreed an order can be made giving effect to agreed matters but that certain consequential matters may need to be adjourned to a further short remote hearing.