Neutral Citation Number: [2024] EWHC 921 (TCC)

Case No: HT-2023-MAN-00005

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS & PROPERTY COURTS IN MANCHESTER**
**TECHNOLOGY AND CONSTRUCTION COURT (KBD)**

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester M60 9DJ

Date handed down: 23 April 2024

**Before**:

**HIS HONOUR JUDGE STEPHEN DAVIES**
**SITTING AS A JUDGE OF THE HIGH COURT**

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**Between:**

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| **PEACHSIDE LIMITED** | **Claimant** |
| **- and -** | |
| **(1) MR KOON YAU LEE**<br>**(2) MR TAK CHANG KEUNG** | **Defendants** |

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**Wendy Mathers** (instructed by **Bude Nathan Iwanier LLP**) for the **Claimant**
**Philip Byrne** (instructed direct) for the **Defendants**

Hearing dates: 19 – 22 March 2024
Draft judgment circulated: 16 April 2024

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# APPROVED JUDGMENT

*Remote hand-down*: This judgment was handed down remotely at 10am on 23 April 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**His Honour Judge Stephen Davies**

**His Honour Judge Stephen Davies:**



## Introduction and summary of decision

1. This is a terminal dilapidations case in relation to a business tenancy concerning part of a former textile warehouse in the Chinatown area of central Manchester known as and located at 33 George Street and 14 Nicholas Street, Manchester ("the property").

2. The claimant company is the freehold owner of the property and granted the defendants, together with a further man, Mr Chi Ming Cheung (now deceased), a business tenancy of the first to fourth floors of the property ("the premises") for a term of 14 years running from 27 February 2003 by a lease dated 25 June 2023 ("the Lease"). The premises were used by the defendants as a Chinese restaurant, known as Pearl City, which had been opened by Mr Cheung and others in the early 1980's.

3. The Lease contained an express repair covenant in standard terms. It also contained: (a) a five year and final year internal and external redecoration covenant, again in standard terms; (b) standard covenants to yield up the premises at the end of the lease, not to make alterations without consent, not to obstruct the windows, not to place a strain on the structural parts and to keep the premises clean.

4. The upper and lower ground floors of the property are occupied under a business tenancy by a bookmakers business, Betfred ("the Betfred premises").

5. The Lease expired by effluxion of time on 26 February 2017. The defendants brought an action seeking a new tenancy under Part II of the Landlord and Tenant Act 1954 ("Part 2"), which was not opposed in principle, although there was a dispute as to the terms (in particular the length) of any new tenancy and also in relation to liability for disrepair. However, in August 2020, without warning, the defendants served notice of discontinuance of the Part 2 proceedings, with the result that the Lease expired 3 months later on 26 November 2020. Despite this, the defendants remained in possession until 10 March 2021 when, again without warning, but in the face of an intention by the claimant to bring proceedings for possession, they returned the keys to the premises which they had by then vacated.

6. Although the defendants removed the various items used in the restaurant business before vacating the premises, otherwise they took no steps to comply with their repairing covenants. The state of the

premises at the time they left were described by Mr Fluss, the claimant's director, in colourful terms, as a "warzone with grease".

7. In the meantime, the claimant had taken various steps to seek to enforce the defendant's repairing obligations. In June 2019 a section 146 notice was served and in October 2020 a schedule of dilapidations was served, followed by a revised schedule of dilapidations in May 2021 to take into account the removal of the restaurant related items.

8. The claimant had to decide what to do with the premises. The decisions it made, and its reasons for making those decisions, lie at the heart of this case. The claimant's case is that initially it attempted to let the premises in their existing state but fairly quickly, on advice, decided that: (a) the premises were effectively unlettable in their current state; (b) substantial and expensive works would be needed to put them into repair for re-use as a restaurant but this would be uneconomic, given the depressed demand for restaurant premises in Chinatown at that time; (c) the most advantageous alternative use was as commercial office space.

9. The claimant's case is that it thus decided, again following advice, to undertake works to the premises in two phases. Phase 1 involved, primarily, works required to put the premises in repair pursuant to the schedule of dilapidations, comprising a strip out and repairs to the main structure and fabric of the building ("the phase 1 works") in the expectation, according to the claimant, of being able to re-let the premises in that state as shell commercial premises. Phase 2 would proceed if a letting did not materialise on that basis and involved a redevelopment to create fully lettable office space available for immediate occupation ("the phase 2 works").

10. The phase 1 works were duly put out to tender and the claimant engaged a company known as S Roche Building Contractor ("Roche") to undertake the works, which were commenced on 7 March 2022 and completed subject to snagging around a year later. The premises were not, however, re-let as a shell, so that the phase 2 works were duly tendered and a contract given to a company known as Workspace Solutions and are now underway. They include one item of work forming part of the subject matter of this claim which was not completed as part of phase 1 works, namely works to the internal staircase. They also may include one further item of works the subject of this claim, namely the replacement of the existing goods lift and hoist.

11. The defendants' case, in short, is that this version of events is in reality an elaborate charade and a device for the claimant to extract as much as it can from them by way of this claim. That is because they contend that the premises have never realistically been lettable as self-contained office space, due to the difficulties with access to the premises, without the claimant also obtaining vacant possession of the Betfred premises so as to resolve those access problems. They contend that the claimant had always intended to obtain vacant possession of the Betfred premises (the lease of which was due to expire in February 2024) in order to resolve these access problems and has had no genuine intention of seeking to re-let the premises until that has been done and a full scale redevelopment been undertaken. They contend that the phase one and phase two works have been designed and undertaken, the defendants say, by the claimant in an extremely leisurely manner, in order to enable the claimant to pursue the defendants under the Lease covenants whilst leaving it free to pursue its true ambition once these proceedings have been concluded.

12. The defendants contend that the legal consequence of the claimant's true intentions and conduct is that whatever works have been undertaken and monies expended by the claimant in relation to the disrepair the subject of this claim cannot be recovered for, essentially, three separate reasons. The first is that some elements of the works were unnecessary and/or involved betterment, even if – in relation to the goods lift – they will ever in fact be carried out. The second is that the cost of the works exceeds the diminution in value of the reversion due to the disrepair (the first limb of s.18(1) of the Landlord and Tenant Act 1927 – "s.18(1)"). The third is that, given the claimant's plans to redevelop the whole property in any event, the repairs will be rendered valueless (the second limb of s18(1)).

13. The resolution of these fundamental arguments is decisive of most of the issues in the case, although there are some minor issues which must also be determined. There is also a claim for loss of rent and insurance rent pending the completion of the phase 1 works which also requires resolution.

14. In summary, going into the trial the position was as follows as regards the remedial works and costs. £301,701.06 represented fully agreed costs, as between the building surveyors at least, who had agreed that there was a breach of the relevant covenant on the part of the defendants, had agreed that the remedy for the breach of covenant was appropriate, and had agreed that the costs incurred by the claimant in relation to the remedy were appropriate. £57,309.25 was partially agreed costs, i.e. the building surveyors had agreed that there was a breach of the relevant covenant on the part of the defendants, but either the full remedy for the breach of covenant was not agreed as appropriate or the costs incurred by the claimant in relation to the remedy were not agreed as appropriate. The claimant was claiming the full amount of £175,845 in relation to such works as at the date of the joint statement of the building surveyors. Management costs were agreed at 7% in relation to such works as were the defendants' responsibility. The further sum of £5,650 was agreed as regards various surveyors fees.

15. However, there were more fundamental disputes as between the valuers. They had adopted different bases of valuation and had valued different interests in the property. They had also reached different conclusions as to the relevance of s.18(1). The defendant's valuer had included opinions about some of the items which had been agreed by the defendant's building surveyor.

16. The claimant has been legally represented by solicitors and counsel throughout. The defendants were legally represented by both solicitors and counsel for much of the case but, more recently, had dispensed with the services of their solicitors but had retained their existing counsel now acting on a direct access basis. I am grateful to Ms Mathers and Mr Byrne for their extremely helpful and co-operative presentation of their respective clients' cases.

17. I heard evidence from: (i) Mr Daniel Fluss, the director of the claimant company; (ii) Mr Koon Yau Lee, the first defendant; (iii) Mr Nick Coffey, the claimant's chartered building surveyor, and Mr John Valentine, the defendants' chartered building surveyor, who gave evidence concurrently; (iv) Mr Nick Davies, the claimant's valuer; and (v) Mr Dominic Stanger, the defendants' valuer.

18. As to these witnesses: (a) Mr Fluss was clearly genuine and, subject to some guardedness about the inter-relationship between the works being undertaken and the plans for the redevelopment, reliable; (b) Mr Lee's oral evidence was candid in the extreme, unlike his witness statement which had been drafted by his then solicitors with, I have to say, little apparent regard for the requirements of

PD57AC; (c) Mr Coffey and Mr Valentine were knowledgeable, helpful and co-operative. I am satisfied that Mr Coffey, because of his longer and deeper involvement with the case, including the undertaking of the remedial works, whilst also remaining properly independent, was overall the more convincing of the two where their opinions differed; (d) Mr Davies and Mr Stanger were also knowledgeable and helpful. Overall I prefer Mr Davies' views where there is a conflict, partly because Mr Stanger had become a little too invested in advancing his clients' interests, due to his long involvement as their property representative on a commercial basis, during which he appeared to have fallen out somewhat with Mr Fluss, and partly because his views seemed to me to more accurately reflect my assessment of the commercial realities of the valuation exercise.

19. I also had a most informative site visit to the property and the premises. The case concluded with closing submissions on the final day and I reserved judgment.

20. Having done so my conclusion is that, save for one exception (the goods lift / hoist), I am satisfied that the claimant's case is to be preferred and I am satisfied that the claimant is entitled to judgment against the defendants in the principal sum of £542,671.17.

21. My reasons follow. This is not a case which turns on any fine point of law, so that it is sufficient to refer briefly to the relevant legal principles and then to set out my factual findings and my conclusions.

## Relevant legal principles

22. Both counsel have made extensive reference to the widely cited practitioners textbook Dilapidations: The Modern Law and Practice, 7th edn (2021), by Dowding, Reynolds and Oakes ("Dowding") and there is no need to lengthen this judgment by citation from its contents.

23. It is also convenient to refer to the decision of Edwards-Stuart J in Sunlife Europe Properties v Tiger Aspect Holdings [2013] EWHC 463 (TCC) for his general conclusions on the law at paragraph 46 in which, as material to this case, he stated as follows.

> "(1) The tenant is entitled to perform his covenants in the manner that is least onerous to him. In general, therefore, such performance should be the starting point for any assessment of damages.
>
> (2) The tenant is obliged to return the premises in good and tenantable condition and with the M&E systems in satisfactory working order: he is not required to deliver up the premises with new equipment or with equipment that has any particular remaining life expectancy. The standard to which the building is to be repaired or kept in repair is to be judged by reference to the condition of its fabric, equipment and fittings at the time of the demise, not the condition that would be expected of an equivalent building at the expiry of the lease.
>
> …
>
> (5) Any claim by the landlord for the cost of repairs is subject to the general rules that (a) he cannot recover for a loss which, by acting reasonably, he could have avoided, and (b) he cannot recover the cost of remedial work that is disproportionate to the benefit obtained.
>
> (6) By contrast, where there is a need to carry out remedial work as a result of the tenant's breach of his repairing covenants, the fact that the landlord has carried out more extensive

> work than was caused by the breach does not of itself prevent him from recovering the cost of such work as would have been necessary to remedy the breach. [I interpose to note that where the landlord has carried out works which exceed the tenant's liability, one way of identifying the reasonable cost of the works for which the tenant is liable is to reduce the cost of the work actually carried out so as to reflect any element of betterment – see Dowding at 29-14].
>
> (7) Where market conditions at the expiry of the lease require upgrading or refurbishment works to be carried out in order to enable the building to be let to the appropriate type of tenant, a tenant in breach of a repairing covenant is not liable for the costs of any work to remedy the breach to the extent that such work would be rendered abortive by the need to upgrade or refurbish the building (ie where there is supersession).
>
> (8) Where the tenant is in breach of his covenant, in the absence of any evidence to the contrary the court is entitled to infer that remedial work is necessary to remedy the breach unless the tenant demonstrates the contrary ..."

24. As I have said, this is a case where the defendants rely on the statutory cap set out in section 18(1). That section has two limbs. The first is to the effect that damages cannot exceed the amount by which the value of the landlord's reversion is diminished by reason of the breach. The second is that no damages are recoverable where the premises are to be pulled down or structural alterations are to be carried out at or shortly after the end of the term.

25. The first limb is an objective assessment, achieved by taking a hypothetical valuation of the reversion on the term date (in this case 26 November 2020) without the benefit of hindsight, on two bases, one on the basis of the premises as it would be in compliance with the covenants in the lease and the other on the basis of the premises in its actual condition. The task for the court is to find the difference between the value of the premises in disrepair on the open market and the value that the premises would have had had there been no breach of the covenant to repair.

26. The second limb is a subjective one, where the relevant intention is that of the claimant, not a hypothetical purchaser. In order to make out this limb in the instant case the defendants would need to demonstrate that as at 26 November 2020 the premises were going to have such structural alterations as would render valueless the repairs covered by the covenant shortly after 26 November 2020.

27. The starting point for analysis in situations where the landlord has done the work is that the amount of the diminution can be inferred from the costs of the repairs reasonably necessary to make good the loss caused by the tenant's breaches of covenant: Sunlife at paragraph 214, approved by the Court of Appeal at paragraph 16 [2013] EWCA Civ 1656.

## Factual findings

28. I do not of course need to repeat here the summary of the facts contained in the introduction to this judgment.

### The property

29. The claimant has owned the freehold of the property since 1963. It is worth providing some details of the structure and layout of the property at this point, since it is important to many aspects of the

case. As I have said, it is a former textile warehouse located in Manchester's Chinatown area. It has brick walls and a pitched slate roof with concealed lead gutters behind a parapet wall. Its original windows were largely single glazed hardwood framed sliding sash windows. It has timber floors supported by cast iron columns. It lies in what is known as the George Street conservation area.

30. Its principal frontage runs along Nicholas Street, which itself runs roughly north to south through the heart of Chinatown, from Mosley Street to Portland Street, and has a park / open car park immediately opposite the frontage to the property which, it is fair to say, is pleasant during daylight hours but not necessarily quite so pleasant after dark, due to occasions of anti-social behaviour, although convenient for those driving to the premises. To the north side runs George Street, which is where the principal entrance to the premises lies, next to the adjacent building which is currently used as a casino and which is a grade 2 listed building. On the other side of George Street is the rear of the long established and well-known Manchester Art Gallery. To the south side runs St. James Street, which has the look and feel of a back access street, and where the external fire escapes are situated.

31. As is common with former textile warehouses, access to the property from the street is gained via the upper ground floor, which is raised above external ground level so that access can only be gained by ascending some 8 stairs. There is a lower (basement) ground floor below street level. There are separate entrances giving access to the premises and to Betfred's premises on the Nicholas Street and St James Street sides. The principal entrance to the premises on George Street allows access via two short flights of stairs (one with 3 risers and the other with 5[1]) to the upper ground level, where there is a lobby from which access may be gained to the first to fourth floors by stairs. There had previously also been a passenger lift in this location, which has been redundant for some considerable time but is to be replaced as part of the phase 2 works. The entrance is currently rather unprepossessing, but could relatively easily be made to look more attractive. The entrance is too restricted however to offer any lift access, whether for the physically disabled or more generally. There is also a separate side entrance on St James Street which also involves climbing stairs to upper ground floor level, from where access to the first to fourth floors can be gained either by stairs or by the goods lift. The goods lift also travels down to the lower ground floor, whereas the former passenger lift did not. There is separate access via stairs to the Betfred premises on Nicholas Street.

32. The total gross internal area of the property is around 16,000 ft2, of which the premises has around 12,000 ft2, with around 10,000ft2 of that being lettable. The demise of the premises includes the two side entrances and lobbies referred to above on the upper ground floor, including the goods lift and the space where the passenger lift was and will be post development, as well as the first to fourth floors.

33. In terms of the surrounding area, Chinatown is a relatively small area within the Manchester city centre area, which itself is of course a mixed area of buildings of all shapes and sizes, used for offices, shops, restaurants and bars, hotels, residential accommodation and everything else in

[1] This is apparent from for e.g. the plan of the upper ground floor appended to the Betfred lease and was observed on the site visit.

between. Chinatown has historically had a reputation for Chinese restaurants and shops but, as already indicated, the restaurant business has suffered in more recent years, both before and especially during and after Covid, and – as Mr Stanger says – it is the more visible restaurants at ground floor level which have tended to survive and thrive which, sadly, was not the case as regards Pearl City.

34. The only practicable means of allowing non-stair based access from street level to the first to fourth floors would be to obtain vacant possession of some or all of the Betfred premises, because it would then be practicable either to widen and remodel the existing George Street access to create an entrance lobby and allow access to a street level passenger lift or to configure the Betfred premises so as to provide a street level lift access on Nicholas Street, which could either then be continued right up to the fourth floor (and thus at least arguably render redundant the proposed alternative existing lift access) or from which level access could be obtained to the existing proposed lift access.

## Relevant events

35. The first relevant lease of the premises occurred in 1983 and was a grant to the company which first ran the restaurant from the premises. The Lease in this case was granted in 2003. The lease to Betfred was granted on 20 February 2014 for a term of 10 years. In anticipation of the expiry of the Lease the claimant served a schedule of dilapidations on 12 September 2016.

36. Following expiry of the Lease the defendants made an application for a new lease under Part 2 on 8 June 2017, seeking a 14 year lease. The claimant did not oppose renewal, but did propose either a 6 year lease or a 14 year lease with a 6 year break clause.

37. The defendants contend that it is clear that the offer of a 6 year lease was to bring the leases of the two separate parts of the property into line, because even by this stage the claimant had already decided to redevelop the property once the Betfred lease expired in 2024. Mr Fluss accepted that the claimant would have wanted to see whether at that stage a better return could be obtained by letting to someone who wanted to take the whole property, but denied that this was its positive intention at this point. Mr Byrne submitted that this evidence was inconsistent with an email from Mr Stanger to the claimant's property agent, Mr Ingle, in January 2019, which referred to the claimant wanting only a 6 year lease because it was intending to redevelop at the end of 6 years. However, those are words which came from Mr Stanger, representing his belief rather than Mr Ingle's belief, to whom this obviously came as a surprise. I accept Mr Fluss' evidence that the claimant did not have a settled intention to redevelop the property at this stage, although it is obvious that the reason the claimant only wanted to offer a 6 year lease was to give it the option to do so if that was a commercially beneficial option.

38. There was also an issue at this time about disrepair to the roof. This arose because the defendants contended that the claimant had failed to comply with its repair obligation in relation to the roof and that this had caused disrepair to the interior and exterior of the upper sections of the premises. However, on examination at trial, it became clear that this was not the case. Instead, the position was as follows.

39. Until 2019 both parties had been under the mistaken impression that the defendants were responsible for the repair of the roof under the Lease, seemingly because this was the position under the 1983

lease. Mr Lee said that before 2019 there had been some leaks from the roof, but that it was not a substantial problem.

40. In 2019 the claimant first realised that it was responsible under the Lease for repairs to the roof, although it could also pass on the costs to the defendants and Betfred as tenants, and instructed a site survey (conducted by Mr Coffey), which resulted in a report dated 4 June 2019 confirming localised water ingress and consequential damage and other localised disrepair and estimating full repairs to cost some £50,000 excluding fees and VAT. Mr Lee confirmed that they did not want the claimant to carry out this work at the time, because they could not afford to pay their contribution.

41. In June 2019 the claimant also sent a fully detailed s.146 disrepair notice, requiring the defendants to undertake the substantial works specified in the accompanying schedule. It also had a full inspection and disrepair schedule provided by its surveyor (again Mr Coffey), which identified a substantial number of disrepair items.

42. It is clear that at this stage the defendants had become extremely worried about the cost implications of all this. I am satisfied that the email from Mr Lee to Mr Stanger sent in June 2019, complaining about roof leaks and their alleged adverse impact on the running of the defendants' restaurant business, which Mr Stanger sent on to the claimant's agents, was nothing more than a negotiating tactic, designed to afford Mr Stanger an opportunity to contend for a reduction in any amount which the defendants might be asked to pay for any roof repairs. The same tactic appears from the email sent by Mr Stanger to Mr Coffey in the same month, suggesting that any window repainting could be done when the scaffolding was in place for roof repairs – again clearly in my judgment with a view to seeking to minimise the defendants' cost to undertake this work.

43. Mr Lee accepted that he knew that the claimant did want these items of disrepair repaired, putting paid to any previous suggestion by the defendants that this was all some elaborate charade and that in fact the claimant had no interest in the works being undertaken.

44. In August 2019 a rent review was concluded, dating back to 2013, resulting in a very substantially increased rental. Mr Lee said that the defendants were seeking to find a purchaser for the restaurant business. It is clear in my judgment that they had decided to exit the business and simply did not have the funds to undertake any repairs for which they were liable.

45. By August 2020 the defendants had decided that they were no longer interested in a new lease, doubtless because they were unable to find a purchaser, and without prior notice served notice of discontinuance of the Part 2 claim, with the result that the Lease expired 3 months later on 26 November 2020.

46. On 13 October 2020 the claimant served its schedule of terminal dilapidations upon the defendants.

47. As I have said, the defendants remained in possession until 10 March 2021 when, again without warning, they returned the keys in the face of an intention by the claimant to bring proceedings for possession. Although Mr Byrne submits that the claimant's failure to take any active steps to remove the defendants in the intervening period indicates that they had no intention to re-let the premises pending the expiry of the Betfred lease and the opportunity to redevelop the whole property, that seems to me to be a submission made without any real basis or evidence to support it. The claimant was aware from an inspection of the property on 9 December 2020 that the defendants

had not removed the restaurant accoutrements, and exercising a right of re-entry in such circumstances was not obviously attractive if the defendants were in fact intending to remove their possessions without undue delay.

48. The same is true of Mr Byrne's complaint as to the speed of the claimant's actions thereafter. The claimant, perfectly sensibly, commissioned and then served a revised schedule of dilapidations in May 2021 to take into account the removal of the restaurant accoutrements. There was some engagement by the defendants, because in August 2021 a Scott Schedule was prepared by both parties' then building surveyors, but no agreement was reached and there was no proposal by the defendants to undertake remedial works themselves.

49. There is an email from a Manchester firm of property advisers to the claimant dated 1 June 2021 which records their advice on re-letting following an inspection of the property. In summary, they concluded that it would not be economical to refurbish the premises for its existing restaurant use and that "best value would be extracted by looking into alternative uses such as Residential and Office use". There is no criticism of this advice, since the defendants' own case (and experience in attempting to find a buyer) is that by 2021 the demand for restaurant accommodation in Chinatown had significantly declined. It is common ground that under existing applicable planning policies there would be no obstacle to obtaining planning permission for office use.

50. Mr Fluss gave evidence that it was in those circumstances that the claimant decided to undertake works to the building in two phases, in the hope that someone would let the property following the completion of phase1. Phase 1 was a dilapidations strip out and repair, which involved putting the main structure of the property into proper repair, leaving it in a shell condition in repair to make it re-lettable, on the basis of the advice received that the premises were unlettable as was. He said that the claimant's agents made investigations with Betfred and also with the owner of the adjacent casino, but neither were interested in taking the premises. He said that the claimant was advised by Alun Jones of Edwards & Co, letting agents, as well as Russell Davis of Work Space, office designers, that turning the premises into offices would be the best chance to let the building at the highest return. He said in cross-examination that he had been advised that the claimant could expect to obtain a rental of £20/ft2 or more once the phase 1 works were completed, referring to advice from two property agents, Sixteen Real Estate and Knight Frank as well as the opinion of Mr Davies (see below).

51. The defendants contend that the claimant must always have known that there was no possibility of letting the premises as office space without also obtaining vacant possession of the Betfred premises, and that undertaking the phase 1 and then the phase 2 works in an extraordinarily leisurely way was just a device so as to seek to obtain a substantial sum from the defendants by way of this terminal dilapidations claim whilst waiting for the Betfred lease to expire and undertake a complete redevelopment. It is convenient to address this key point at this stage by reference to the evidence.

52. When this motive was put to Mr Fluss in cross-examination he denied it, saying that all the claimant wanted to do was to undertake as little work as possible as was consistent with being able to let the premises and obtain some income. He seemed to me to be entirely genuine in this evidence. Indeed, as a relatively small property investor dealing with this particular property that seems to me to make perfect sense. I can quite see that other, larger, property investment businesses dealing with a much

more substantial or valuable property might have been willing to forego rent for at least 3 years (March 2021 to March 2024) in order to maximise the return after a complete redevelopment, and might have been prepared to take the risk that it might take some considerable time and consequential loss of rental income to secure vacant possession of the Betfred premises if the tenant was unwilling to vacate – and indeed the risk that they might fail to get the tenant out either at all or without paying substantial compensation. However, it seems unlikely to me that the claimant would have been prepared to take such a chance and to write off any possibility of any return in the meantime.

53. When considering this point, it is worth stepping back and considering the difference between the phase 1 works, the phase 2 works and any works which might be undertaken under a complete redevelopment of the whole property. In summary, as Mr Fluss said, the phase 1 works primarily involved a strip out and repair to put the premises into a shell condition lettable on that basis. The phase 2 works involved creating ready to let accommodation on each floor, by providing a new passenger lift, replacement stairs, fire safety compliant separation between the office spaces and the lift and stair access areas, toilets on each floor and an upgraded entrance and lobby area.

54. Any further works undertaken with vacant possession of the whole property would not, in my judgment, fundamentally alter or supersede the great majority of works to the first to fourth floors of the premises as described above. That would only change if a decision was made to completely remodel the entrance and access to the first to fourth floors by providing a lift and stairs from the Betfred premises at pavement level right up to fourth floor level, through which access to all offices was obtained and which rendered the rear access from George Street and/or St James Street and the stairs and lifts used in connection with such access completely or at least practically redundant. However no-one, not even Mr Stanger, has suggested this as a specific proposal, let alone the only one which would make the premises lettable as office accommodation.

55. Mr Stanger's key opinion is that the premises alone are effectively unlettable as office accommodation, because they lack a working passenger lift from street level. He says that in order for that to happen Betfred would have to vacate so that alterations could be made to provide street level access to a lift. But that is all he says in terms of the detail of what would need to happen. It is this which drives his fundamental conclusion (at paragraph 15.4 of his report) that "at December 2020 a prudent and well advised owner/purchaser of the building would mothball the upper floors of the building until the Betfred lease expires in 2024 and vacant possession of the whole building could be achieved. They would use that time to apply for and obtain planning consent to redevelop the building for flats or offices, put out tenders and line up a contractor to do the conversion works". His opinion is that "there would be close to zero demand from office occupiers for offices for suites of 2,000 to 3,000 sqft for office in the landlord's proposed scheme, or for a residential development. The development for offices or residential could only proceed if the entrance was widened and remodelled to create an entrance lobby, and allow access to a passenger lift from street level" (paragraph 17.2).

56. Mr Davies disagrees. His opinion is that the Manchester city centre office market has been and remains strong and (paragraph 7.3) that the premises "when refurbished for office premises would be completed to a high specification, providing attractive accommodation within a period building in a central Manchester location" and "of interest to a variety of occupiers due to the good location and

attractive nature of the proposed accommodation", so that the market rental value would be around £20ft2, discounted from £22.50ft2 to reflect the access difficulties.

57. Both valuers were cross-examined about the particular strengths and weaknesses of Chinatown as a location for office accommodation. Mr Davies accepted that it was not a prime office location, such as Spinningfields (where the Civil Justice Centre is located), but asserted that it was nonetheless a very good location. He observed that many Manchester city centre buildings are converted former warehouses with similar access restrictions and that there was no basis for saying that they were all unlettable as office accommodation for that reason. He said that he was aware of similar refurbished warehouses where similar and higher rents had been achieved for office accommodation. Mr Stanger contended that Chinatown was not a good office location and that there were few if any other office buildings there. He gave the example of the property next along Nicholas Street after St James Street which, he said, his company managed and where there were only small office suites commanding a rental of only around £10ft2. He believed that the advice obtained from the agents approached by Mr Fluss was "optimistic". He said that it was a high risk to market the existing premises with the existing access restrictions.

58. In my judgment, Mr Stanger is wrong to say that the premises alone are effectively unlettable as office accommodation given the existing access difficulties and unattractive entrance. As Mr Davies says, there are many buildings in central Manchester with similar histories and access restrictions and there is no compelling evidence that all are unlettable. The unattractive entrance is relatively easily remedied, and it must be remembered that the George Street entrance lies on an attractive street next to a grade 2 listed building, which is a not unattractive casino, and opposite the rear entrance to the Manchester Art Gallery. Whilst Chinatown is, I accept, not a prime office location, it is right in the heart of city centre Manchester, with excellent access to all major facilities, and the particular location is an open attractive one, as demonstrated by the feeling of space and open views on the site visit. I accept that it might appeal less to more traditional office users, and the lack of disabled access from street level is a negative factor, but I have no doubt that it would appeal to those in the more creative occupations and, because the George Street stairs up to upper ground level are short flights, separated by a level area, whilst disabled access would be very difficult if not impossible save with help to the fully disabled, it is by no means impossible to others. As Mr Stanger accepted in cross-examination, it is not completely unlettable, so that the real question is the discount the market would expect for the limited access.

59. In my judgment Mr Stanger has overly downplayed the Chinatown discount and, whilst I think Mr Davies is a little optimistic in his discount for limited access, overall his figure of £20ft2 is within a reasonable bracket. Whilst he was not cross-examined on this, his valuation appears to be based on the stage 2 works as well as the stage 1 works being undertaken, so that it is higher than the valuation based solely on the premises in repair. However, that does not, in my judgment, derogate from his fundamental conclusion, which I accept, that the premises in repair would command a reasonable rental for office accommodation, such that it was reasonable for the claimant to undertake them as and when it did.

60. I do however accept Mr Byrne's submission that the decision to split the works into the two phases, as well as the decision to defer the works to the passenger lift on the George Street entrance and the goods lift to the second phase, raise grounds for justifiable suspicion that the claimant is hedging its

bets as to whether or not to undertake these works should it be successful in securing vacant possession of the Betfred premises. It is, I think, apparent that it would probably be a better long term decision to do so and to remodel the Betfred premises so as to allow lift access to all floors from pavement level if that was possible. However, in my judgment this does not justify a conclusion, and I reject the submission as made, that this shows that the whole process has been an elaborate charade and that the claimant has never had any intention of concluding these works so as to offer the completed office accommodation to the market.

61. I am prepared to accept that once this judgment is promulgated and the claimant knows the defendants' liability (although not, of course, necessarily the defendants' ability to satisfy that judgment), it will seek to reach some agreement with Betfred to enable the lift access to be provided. However, I accept Mr Fluss' evidence that this is not a settled intention, and that it all depends on the numbers. If, as he said, Betfred was willing to enter into a new lease at a rental which allowed the claimant to cover the difference between the rental which the premises could command with and without lift access, then I am satisfied he would take that as an option. If that was not an option, the claimant would have to assess its prospects of securing vacant possession of the Betfred premises on the basis of showing an intention to redevelop under Part 2, knowing that it would have to pay compensation to Betfred in such circumstances, and would also have to factor in the time cost of the inevitable delay in the event that it went to a contested hearing as well as the risk of failure. The claimant would have to make a decision about whether or not to go down that route and whether or not to complete the phase 2 works and seek to relet the premises in the meantime. I do not accept that the claimant has always or already decided to mothball the phase 2 works in such circumstances. Mr Fluss is above all, in my assessment, a businessman driven by business considerations, and would probably in my judgment choose the bird in the hand (i.e. to complete the phase 2 works and seek to secure some income from letting the premises) rather than the two in the bush (i.e. doing nothing until the situation with Betfred is resolved on way or another, possibly after some considerable time period has expired).

62. There is nothing in the evidence to which I have been referred which is inconsistent with this assessment and to which I now refer.

63. The tender analysis undertaken by Knight Frank on 8 December 2021 shows that the phase 1 works were specified in July 2021 and then tendered, and that the tenders submitted by the 4 tenderers were considered and the lowest tender (from S. Roche Contractors) selected. Given that the revised schedule of dilapidations was only obtained in May 2021 that does not seem to me to be an unduly protracted process, although I have no doubt that it could have been expedited had that been justified.

64. The works were scheduled to start in February 2022, but were delayed by 4 weeks due to the discovery that the utilities had been disconnected for non-payment by the defendants. They were completed on 28 February 2023 with snagging works continuing thereafter until around August 2023. The contract period as tendered ranged from 16 to 30 weeks, so that whilst the actual contract period was undoubtedly longer than envisaged at tender stage, I do not regard it as unduly protracted. There is also clear evidence of delays due to the involvement of the conservation officer, as to which Mr Davies gave evidence of similar delays due to his own involvement in a building in the same area.

65. All that said, I am prepared to accept that the claimant could and no doubt would have acted with more expedition had there been no question of the potential inclusion of the Betfred premises.

66. In July 2023 the claimant served its Part 2 Counternotice on Betfred, stating that it would be opposing the grant of a new tenancy on the grounds of persistent delay in the payment of rent and also on the grounds of its intention to demolish or reconstruct and reasonably requires possession to do so. I accept Mr Fluss' evidence that this does not mean that the claimant had made a definite decision to do so by this time. As Ms Mathers submits, it is legitimate to include such a ground on the basis that the date at which the question is to be determined is the date of the ultimate hearing, rather than the date of the notice or the date of expiry of the contractual tenancy.

67. Phase 2 of the works started in November 2023 and is scheduled to finish in June 2024. The claimant is using the services of a commercial contractor, Work Space Design & Build. The building surveyors undertook a joint site inspection on 8 March 2024 to see whether or not there was any need to revise their views as summarised in their joint statement revision A, completed in November 2023, and the result of their inspection was the subject of a supplemental report from Mr Coffey dated 14 March 2024 and evidence from both at trial.

68. This is therefore a convenient point to address and determine the disputes regarding the individual specific disputed items of works.

The specific disputed items of works

69. There is a joint schedule prepared by the building surveyors and a joint schedule prepared by the valuers. The former is based upon the schedule of dilapidations. It contains a lengthy list of agreed items and a much shorter list of partially agreed items, reflecting the sensible and co-operative approach taken by the building surveyors. The latter is also based on the schedule of dilapidations. It contains a summary of the various work items and, against each, identifies whether or not they are agreed as value affective works (i.e. works which affect the value of the premises in and out of repair).

70. Two particular points should be observed at the outset as regards the valuers' joint statement and reports and their approach.

71. The first point is that although there is a difference between Mr Davies and Mr Stanger as regards the "in repair" valuation of the premises (in part explained because Mr Stanger has valued the entire property whereas Mr Davies, more correctly in my view, given the wording of s.18(1), has valued the interest in the reversion of the premises) they have in substance adopted the same approach to arriving at the "out of repair" valuation. That is because they have adopted the same approach namely: (a) considering the disrepair items and the works required to remedy them; and (b) considering whether or not they affect the value of the premises and, even if they do, whether they will be superseded by further works which are the landlord's responsibility or which the landlord will carry out. Mr Davies has arrived at a figure for the works required to remedy disrepair which are value affective and will not be superseded, has added the cost of administering the works and a rental loss whilst the works are undertaken and has reached a diminution in value of £700,000 on that basis. Mr Stanger has adopted a similar approach (although he has not included anything for rental loss) and has reached a diminution in value of £150,000 on the same basis. Thus, whatever the

theoretical basis for the approach which each has taken, in practice the approach is the same and I can assess each separate item by reference both to what the building surveyors and the valuers say in relation to each. Overall, I am satisfied that Mr Davies' evidence, that the market would factor in the cost of the necessary works to remedy disrepair where that needs to be repaired to make the property lettable as office accommodation, is plainly right.

72. The second point is that both Mr Valentine and Mr Stanger have referred to various reasons for not agreeing particular work items, whether in whole or in part, including references to "betterment". I shall examine the basis for these arguments on an item by item basis. However, there are a number of items where Mr Stanger does not accept the claim for reasons which, on examination, appear to fall more naturally within the scope of the expertise of a building surveyor than a valuer, yet where Mr Valentine had accepted those items. Mr Stanger accepted under cross-examination that, insofar as these issues did raise questions for the opinion of a building surveyor, he would defer to the expertise of the building surveyors. However, as Ms Mathers submitted, it was symptomatic of his desire to advance his clients' interests that he was prepared to advance a case which went beyond his true area of expertise and without even acknowledging that this was what he was doing. In particular, there are a number of areas where Mr Stanger had disputed items in the valuers' joint statement even though they had been agreed by the building surveyors, but had not addressed them in his report (compare paragraphs 19 to 27, where he addressed specific items), so that in my judgment there is no proper basis for disputing these items – or need for me to address them in this judgment).

External windows and internal window boards

73. The cost incurred, inclusive of survey costs of £6,800, amounts to £104,176 for the external windows and £5,135 for the internal window boards. The defendants admit disrepair but have advanced a number of arguments as to why they should not be liable for more than 50% of this cost, all of which in my judgment fail. There was an argument advanced by Mr Stanger that the disrepair to the upper floor windows and internal window boards was worsened due to roof leaks, but this was not a case supported by Mr Valentine and there is no cogent evidential basis for the argument, given the lack of any contemporaneous evidence, documentary or from Mr Lee, that roof leaks had damaged the internal window boards.

74. The claimant's factual case, which is made out on the contemporaneous documents, and confirmed by Mr Coffey who was personally involved at the time, is that: (a) of the five tenderers, four stated that repair was not possible; (b) the successful tenderer, Roche, obtained a detailed condition survey from a specialist joinery subcontractor engaged by it which confirmed that replacement was the appropriate option; (c) the conservation officer rejected the claimant's initial proposal that the existing single glazed hardwood timber framed sliding sash windows be replaced with aluminium windows and required either repair or replacement like with like; (d) the claimant obtained costings showing that replacement with new double glazed softwood sliding sash windows would be less expensive than repairing or replacing with the existing style; and (d) the conservation officer agreed to this proposal, which was duly undertaken.

75. Mr Valentine suggested that the condition survey was not sufficiently detailed, but in my view it plainly was a very detailed report which amply justified the need for substantial remedial works. Mr

Stanger appeared to suggest that the survey was not independent, because it was undertaken by a subcontractor and because both the claimant and the main contractor had a vested interest in replacement as a more straightforward option. However, given that the end result was to obtain a less expensive remedial scheme, I fail to see any sensible basis for this argument. It was also suggested that there should be a reduction for betterment, because the replacement windows were double glazed with a better thermal performance. However, since the claimant saved money overall, including by persuading the conservation officer to accept softwood rather than hardwood frames, it seems to me that there is no sufficient basis for a conclusion that the claimant chose a higher specification replacement for its own purposes and for which it should be required to give any credit, let alone the 50% suggested by the defendants.

76. In the circumstances I allow the full amount claimed.

Mortar joints to elevations in external brick walls

77. The cost for full repointing over all three elevations amounts to £18,460, of which Mr Valentine argued in his report and the joint statement that undertaking the works to the whole of elevation amounted to betterment, and suggested a 60% contribution to the front elevation and the St James Street elevations and a 50% contribution to the Nicholas Street elevation.

78. In oral evidence, Mr Valentine said that since he had not seen the affected areas before replacement his suggestion was based on his assumption as to the affected areas within each elevation. Upon considering the photographic evidence he was prepared to accept that this justified full repointing of the two side elevations, but maintained his position as regards the front elevation. Mr Coffey said that the nature and extent of the disrepair had been confirmed both on inspection once the scaffolding was erected and also once investigations showed that the pointing was loose and friable. He also made the point that the affected areas were scattered across the whole elevation, so that it would not have been practicable or sightly to have undertaken scattergun repairs.

79. In his report Mr Stanger had asserted that when he had inspected the building in 2021 with the defendants' previous building surveyor (who was not called as a witness and in respect of which no contemporaneous photographic or other evidence is available) they had estimated "around 10% of the building area had weathered and recessed pointing" and he believed that the claimant's decision to repoint all three elevations in full was taken for the purposes of development.

80. I prefer Mr Coffey's evidence, based on his involvement at the time and the photographic evidence, than that of Mr Valentine, and I reject Mr Stanger's evidence, and thus accept that the full amount is properly claimed without deduction for betterment or supersession.

Fire escape

81. Mr Valentine accepted that the fire escape was in disrepair and that the costs were incurred as claimed of £37,501 and advances no basis for contesting this item. Mr Stanger observes that the external fire escape as constructed requires any person using it to escape a fire in the second, third and fourth floors to enter the building at first floor level and then to exit again at upper ground level. He concludes that: "this type of fire escape is completely unsuitable for a redevelopment for offices or apartments. As this is the only future for this building, this is not a repair that the prudent landlord would undertake, and adds no value to a purchaser".

82. When this point was put to the building surveyors in their evidence they agreed that, in the absence of the creation of an internal fire protected lobby area, the external fire escape was not fire safety compliant. However, Mr Coffey stated that it was still useable and could still be used, subject to some further discussion with the conservation officer and building control, and both stated that in their view it was reasonable for a landlord to undertake the works, given that its removal was not justified in terms of fire replacement strategy.

83. On the basis of that evidence I accept that the full amount is properly claimed as reasonable, without deduction for betterment or supersession. It cannot be said in my judgment that these works were unreasonably undertaken or that they add no value, especially in these – rightly – fire escape conscious times.

Floor

84. This is another example of an area agreed by the building surveyors but disputed by Mr Stanger on the basis of his own assertion as to the position on his inspection in March 2021, without any evidence from the building surveyor then involved or any contemporaneous photographic or other documentary evidence, and where he seems to give evidence as to the cause of water damage which he is not qualified as a valuer to give. Accordingly I prefer the agreed opinion of the building surveyors on this point.

Wall finishes and decoration

85. Again the building surveyors agree these items, whereas Mr Stanger asserts in his report that "any developer of the building for offices or apartments, would be installing internal walls, plastering and decorating as part of the development. These works do not add value to the building and any disrepair does not affect the value of the landlords reversion". He did not give details, and in my judgment this opinion failed to engage with the point that the phase 1 works, in which these works were undertaken, were designed and undertaken to create an empty shell for letting for office development. It was not apparent to me from my site inspection, and there is no evidence, that the phase 2 works currently being undertaken would in fact supersede these phase 1 works. I asked him about this when he gave evidence and it seemed to me that he was unable to provide any specific explanation as to what works would be superseded and I was not persuaded by his evidence on this point.

86. In the circumstances I accept this items as claimed.

Internal staircase

87. This was the subject of Mr Coffey's supplemental report based on the recent site visit. In short, on the basis of the available evidence the building surveyors agreed that it was only possible to identify one of the existing staircases as being structurally unsafe since, as regards the others, whilst there was some evidence of poor condition there was no evidence as to what, if any, remedial works were required. Moreover, although it had previously been identified that the position of one flight of stairs had been altered for the landlord's benefit, it now appeared that the position of two of the remaining three flights of stairs had also been altered for the landlord's benefit.

88. In the circumstances, Mr Davies realistically accepted in his evidence that the landlord could only properly claim for the one flight where there was evidence of structural disrepair requiring replacement and where there was no argument based on supersession, with the result that the claim reduced from £15,000 to £6,900, which I agree as reasonable and allow.

Goods hoist/lift

89. This is a substantial value claim, on the basis that the claimant had obtained a quotation for £95,000 to restore the goods lift, which it is accepted is in disrepair, to full operation.

90. However, the claimant had also obtained a quotation for the supply and installation of a new passenger lift, which would be accessed from the lobby from the entrance to George Street.

91. As matters stood at trial, the claimant had not placed an order for either prior to trial. Mr Fluss said that he had been told that a saving could be achieved by ordering both lifts at the same time for £60,000 each, but that more recently he had been told that this was not the case and the cost of the goods lift had increased. He said that the claimant only had funds to pay for one lift, and that he had just placed an order for the passenger lift. He insisted that the claimant would replace the goods lift if it had the money. He said that it was important to have the goods lift in operation because, unlike the passenger lift, it served all 6 floors.

92. The building surveyors noted, as was observed at the site inspection, that the works already undertaken had involved the installation of services within the goods lift shaft which, as Mr Coffey accepted, should not have happened and would involve a further investigation by a lift engineer (and possibility a structural engineer) to see if a useable goods lift could now be installed without removing and relocating those services.

93. Mr Valentine added that in his opinion it was now not unusual to have one lift used for passenger access and, when required, for goods access as well, rather than two separate lifts. It is apparent that the goods lift was installed when the property was in use as a warehouse. He observed that there was currently no particular benefit in having access for the goods lift since, as already noted, the goods lift could only be accessed from the St James Street entrance, which itself involved stair access up eight steps to upper ground floor level.

94. In his report, Mr Davies had opined that not replacing the goods lift would impact on the landlord's reversion, stating that "this has greater importance when considering the need to improve the accessibility and marketability of the Property, arranged over 1st to 4th floors with stairs to a passenger lift at upper ground floor" and would "further impact on the Landlord's reversion beyond the subject Property in reducing the flexibility for the building as a whole". He was not specifically cross-examined on this point.

95. In his report Mr Stanger contended that "a goods lift is not needed for an office or residential scheme, and the prudent landlord would not replace the lift, but would use the space it occupies for extra floor area. I suspect the landlord does not intend to replace the goods lift, but if he did, it would not add any value to a purchaser, and therefore its disrepair does not affect the value of the landlord's reversion".

96. What I have to consider is whether or not I am satisfied that this work will be carried out and whether it would be reasonable to do so and whether the cost would be justified by reference to the value of the reversion. In relation to this element of the claim I am not satisfied that the claimant has persuaded me of any of these points, for the following reasons.

97. First, given that the claimant has decided, for eminently good reasons, to install a new passenger lift in priority to the goods lift, I simply cannot conceive that the claimant will spend more money on installing an expensive goods lift in the absence of compelling evidence that the market would consider that office accommodation in this property with only a passenger lift was rendered less valuable. That is particularly so given the possibility of the full property development extending to the Betfred premises, but even without that possibility there is simply no credible evidence that there is a need for a goods lift as well as a passenger lift. Installing services in the lift shaft is compelling evidence of the fact that the landlord has no genuine intention to replace the lift. Although Mr Fluss has asserted that the claimant simply does not have enough funds to pay for both, given that the claimant has funded very extensive and expensive works in phase one and phase two I do not accept that simple assertion as sufficient in the absence of a detailed account supported by documentary evidence as to how the funds have been provided and the absence of further funds for this specific purpose.

98. Second, and for essentially the same reasons, I am not persuaded that it would be reasonable to undertake this work. I accept that in normal circumstances a landlord should be entitled to have an existing item in disrepair replaced and that a tenant who says it would be unreasonable to do so has to provide very cogent evidence to make good that contention, but on the facts of this case that burden is established. As stated, the decision to install the passenger lift is compelling evidence that even the landlord does not regard it as reasonable to spend its own money in replacing the goods lift as well.

99. Third, and lastly, I am not persuaded by Mr Davies' evidence that there will be a benefit to the reversion. The goods lift is, essentially, an expensive and unnecessary duplication of the new passenger lift, in the absence of good evidence that both are needed for office accommodation and, moreover, it does not seem to me to be appropriate to identify the benefit to the landlord as the owner of the whole property as a relevant benefit to the reversionary interest. If the claimant did not own the whole property this consideration would be irrelevant and I do not consider that it can tip the scale in this case where the landlord happens to own the whole property.

Sprinkler

100. The only argument is that advanced by Mr Stanger in his report which is to assert that "the redundant sprinkler system predates the tenant's occupation and has never been used by the tenant. It was installed when the property was a textile warehouse, and was how the property was demised to the tenant. The landlord cannot expect the tenant to pay for stripping out the landlord's redundant fittings, and there is therefore no liability to the tenant". However, this opinion fails to engage with the undisputed position that the system was a tenant installed system (albeit prior to the Lease) and has not been maintained and is in poor condition. In the circumstances, the decision to strip out and make good is clearly a reasonable alternative to repair and, hence, in my judgment the claim is made out.

## Conclusions

101. Taking Mr Davies' revised schedule, £95,000 (for the goods lift) falls to be deduced from the revised total works cost of £503,431, producing a revised total of £408,431. Adding 7% for contract administration (£28,590.17) produces a revised total of £437,021.17.

102. For the reasons I have already given I am satisfied that an award in this amount does not exceed the statutory limit under the first limb of s.18(1) and that on the facts the second limb of s18(1) is not engaged.

103. To that is to be added the claim for loss of rent. The claim is made for the passing rent payable under the Lease for the period 10 March 2021 to 28 February 2023 (£128,219.17), alternatively for the duration of the Phase 1 works (£63,753.42). The claimant has also claimed loss of insurance rent in the sum of £20,111 for the period.

104. In my judgment this is a case where the defendants' conduct has undoubtedly caused the claimant loss over an extended period due to its failure to vacate in November 2020, its failure to give the claimant notice of its intention to hand back the keys in March 2021, and the nature and extent of the disrepair which the claimant had to arrange to be remedied.

105. However, it is also the case that the claimant has taken more time than would otherwise have been necessary due to its having to decide the complicated issue of how best to undertake works to factor in the potential redevelopment of the whole property and also, I am satisfied, with at least a weather eye on the progress of the works as compared with the progress of this litigation and the progress of the negotiations as regards the future of the Betfred lease. It would be unrealistic to adopt a mathematical approach to this exercise. Instead, I am satisfied that recovery of approximately two thirds of these losses is justified and, hence, I award £100,000 as a global sum under this head.

106. Finally, there is the further agreed sum of £5,650 as regards various surveyors' fees.

107. The total award is, thus, £ 542,671.17.

108. Obviously questions of interest and costs will arise, which I shall deal with once judgment is handed down.

End