IN THE COUNTY COURT AT SHEFFIELD **Claim No. G00SE930**

Sheffield Combined Court Centre,
The Law Courts,
50 West Bar,
Sheffield.
S3 8PH.

Date: 7th March 2022

Before:

MR RECORDER McNAMARA

- -

Between:

CLIPPER LOGISTICS PLC

Claimant

-and-

SCOTTISH EQUITABLE PLC

Defendant

- -

Jamie Sutherland (instructed by Knights PLC)
for the **Claimant**

Rupert Cohen (instructed by Trowers & Hamlins LLP)
for the **Defendant**

Hearing dates: 10th – 11th June 2021 (remotely via CVP)

Judgment produced in draft: 31st December 2021

Judgment handed down: 7th March 2022

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JUDGMENT

Introduction

1. This is a claim for lease renewal made by the Claimant which is the current leaseholder of the commercial property at Bays 1-4, Euroway Industrial Estate, Hellaby Lane, Hellaby, Rotherham, S66 8HN ("the property"). The Defendant is the landlord of the property.

2. The previous lease was made on 06.09.10 for a period of 10 years and, on 11.12.19, the Defendant served upon the Claimant a notice pursuant to section 25 of the Landlord and Tenant Act 1954 ("the Act") specifying that the lease would be terminated on 30.06.20 and confirming that the Defendant would not oppose the grant of a new lease to the Claimant.

3. The Claimant's tenancy has continued under section 24 of the Act since the expiry of the contractual term on 30.06.20. For ease of reference, the previous lease which expired on that date is referred to below as the "current" lease.

4. These proceedings were issued and served in June 2020. The Claimant sought determinations from the Court regarding various terms of the new lease. Since that time, the parties have exchanged draft leases in various forms and, through that process, have agreed many of the terms of the new lease. This judgment is concerned with those that could not be agreed.

5. The trial took place by way of CVP on 10th and 11th June 2021 and I reserved judgment. The parties were represented by Mr Sutherland and Mr Cohen respectively and I am grateful to both of them for their detailed and helpful skeleton arguments and assistance during the hearing itself. I apologise for the significant delay in completing this judgment, which has been a result of the pressures of other work.

6. At the trial, I heard lay oral evidence from Mr Harvey Sond, Deputy Chief Financial Officer of the Claimant, and Mr Christopher Wakefield, Fund Manager for the Defendant, each of whom had produced two witness statements, and expert oral evidence as to valuation from Mr Michael Alderton, MRICS, instructed by the Claimant and Mr Edward Neaves, MRICS, instructed by the Defendant, each of whom had provided a report and an addendum report, and both of whom had together prepared a joint statement.

Issues

7. By the time of the trial, the following matters remained in dispute:

   (i) The duration/term of the new lease ("Term");

   (ii) Whether certain alteration clauses, concerned with compliance with energy efficiency regulations, ought to be included ("Alteration");

   (iii) Whether the alienation clause ought to be varied and widened in scope ("Alienation"), and;

   (iv) Whether a revised indemnity clause ought to be included ("Indemnity");

(v) What the rent and interim rent should be ("Rent").

8. In summary, the parties' positions on each of the above issues are as follows:

(i) Term: The Claimant contends for a 5 year term whereas the Defendant contends for a 10 year term with a tenant-only break at 5 years and an upwards-only rent review on the 5th anniversary of commencement;

(ii) Alteration: The Defendant contends for covenants which:

(a) Prohibit the Claimant from carrying out alterations which would result in the property being designated as a "Sub-Standard Property" within the meaning of Regulation 22 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 962);

(b) Provide an indemnity for the cost of a new EPC certificate in the event that the Claimant were to make such alterations, and;

(c) Obligate the Claimant promptly to carry out works to bring the property back to a given EPC standard in the event of alterations having been made with the above effect;

whereas the Claimant opposes the inclusion of those terms and instead contends that agreed terms of the lease are sufficient;

(iii) Alienation: The Claimant wishes to extend the alienation provisions in the current lease (which permit it to share occupation of all or part of the property with a Group company – i.e. one within the same group of companies as the Claimant) so as to enable it also to share occupation of all or part of the premises with a customer and/or a third party logistics company, whereas the Defendant resists any such extension and contends instead for the wording of the current lease;

(iv) Indemnity: The Defendant, some 3 days before the trial began, first proposed wording which alters, and the Claimant says widens the scope of, the indemnity provisions in the lease. The Claimant opposes these changes on the ground that agreement on the indemnity provision had already been reached, which agreement the new wording would, it is said, impermissibly undermine, and in any event on the basis that the new wording is not required and the Defendant has shown no good reason for altering the existing lease wording, which is said in this respect to be sufficient;

(v) Rent: The parties, relying upon expert evidence, differ markedly in their positions on the appropriate rent: the Claimant contends for annual rent of £687,000 and the Defendant for £852,000. There is no dispute in principle that interim rent ought to be ordered nor that the same ought to be payable at the same rate that the Court orders for the rent under the new lease.

The Property

9. Included within the trial bundle were various photographs of the property which show it to be in apparently good condition for its age.

10. The property was built on a self-contained 10.8 acre site in about 1981 (with an additional rear loading bay added in about 1986) as a steel portal frame logistics/distribution unit with insulated cladding to the walls and roof.

11. It is 179,588 square feet in size and situated 1 mile away from junction 1 of the M18 and 4 miles away from junction 32 of the M1.

12. The yard length is 53 metres deep in front of the dock level loading doors and 40 metres deep in front of the ground level loading doors. The structure has 13 ground level and 8 dock level loading doors. The building has a clear height of 12.4 meters. There is office space which comprises 3.3% of the building.

13. The property is fitted out with, amongst other things, a fire alarm system, bunded fuel tanks, dock levelers, a back-up generator, incinerator, lighting, heating and sprinklers.

14. In June 2017, the Claimant undertook repair and redecoration works including the re-application of protective and cosmetic coatings to the roof and the wall cladding systems (which were fitted out in the Claimant's new corporate colours).

The Undisputed Terms of the New Lease

15. The following relevant matters are not in dispute:

(i) Permitted Use means use as a "storage or distribution centre and ancillary offices or such other use as the Landlord may consent to in writing, consent not to be unreasonably withheld in the case of a use within Class B8 or B2 or E(g)iii of the 1987 Order" (clause 1.1) and the Tenant is not to use the property other than for the Permitted Use (clause 3.12);

(ii) The "Premises" includes the: (a) roof; (b) foundations; (c) all Conduits and Landlord's plant, machinery and equipment within and exclusively serving the same; (d) all Landlord's fixtures and fittings; and (e) all alterations and additions thereto (clause 1.1);

(iii) It is a tenancy to which Part II of the Landlord and Tenant Act 1954 (the "1954 Act") applies;

(iv) The repairing covenant mandates that the Claimant is to keep the property/premises in no worse condition than that shown in the schedule of condition included in the previous lease (clause 3.6.1) and the decoration covenant provides that the Claimant is to clean, prepare and paint or treat and generally redecorate all external and internal parts of the property/premises in the fifth and last year of the term (clause 3.7).

The Law

16. There is no dispute between the parties as to the applicable law and, accordingly, I am able to summarise it relatively shortly.

17. The Act provides as follows in so far as is material:

(i) Section 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 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."

(ii) Section 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) in the case of a holding comprising licensed premises, any addition to its value attributable to the licence, if it appears to the court that having regard to the terms of the current tenancy and any other relevant circumstances the benefit of the licence belongs to the tenant.

(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) that the holding or any part of it affected by the improvement has at all times since the completion of the improvement been comprised in tenancies of the description specified in section 23(1) of this Act; and

(c) that at the termination of each of those tenancies the tenant did not quit."

(iii) Section 35 Other terms of the 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) ... 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."

(iv) Section 24C Amount of interim rent where new tenancy of whole premises granted and landlord not opposed:

"(1) This section applies where—

(a) the landlord gave a notice under section 25 of this Act at a time when the tenant was in occupation of the whole of the property comprised in the relevant tenancy for purposes such as are mentioned in section 23(1) of this Act and stated in the notice that he was not opposed to the grant of a new tenancy; or

(b) the tenant made a request for a new tenancy under section 26 of this Act at a time when he was in occupation of the whole of that property for such purposes and the landlord did not give notice under subsection (6) of that section, and the landlord grants a new tenancy of the whole of the property comprised in the relevant tenancy to the tenant (whether as a result of an order for the grant of a new tenancy or otherwise).

(2) Subject to the following provisions of this section, the rent payable under and at the commencement of the new tenancy shall also be the interim rent.

(3) Subsection (2) above does not apply where—

(a) the landlord or the tenant shows to the satisfaction of the court that the interim rent under that subsection differs substantially from the relevant rent; or

(b) the landlord or the tenant shows to the satisfaction of the court that the terms of the new tenancy differ from the terms of the relevant tenancy to such an extent that the interim rent under that subsection is substantially different from the rent which (in default of such agreement) the court would have determined under section 34 of this Act to be payable under a tenancy which commenced on the same day as the new tenancy and whose other terms were the same as the relevant tenancy.

(4) In this section "the relevant rent" means the rent which (in default of agreement between the landlord and the tenant) the court would have determined under section 34 of this Act to be payable under the new tenancy if the new tenancy had commenced on the appropriate date (within the meaning of section 24B of this Act).

(5) The interim rent in a case where subsection (2) above does not apply by virtue only of subsection (3)(a) above is the relevant rent.

(6) The interim rent in a case where subsection (2) above does not apply by virtue only of subsection (3)(b) above, or by virtue of subsection (3)(a) and (b) above, is the rent which it is reasonable for the tenant to pay while the relevant tenancy continues by virtue of section 24 of this Act.

(7) In determining the interim rent under subsection (6) above the court shall have regard—

(a) to the rent payable under the terms of the relevant tenancy; and

(b) to the rent payable under any sub-tenancy of part of the property comprised in the relevant tenancy, but otherwise subsections (1) and (2) of section 34 of this Act shall apply to the determination as they would apply to the determination of a rent under that section if a new tenancy of the whole of the property comprised in the relevant tenancy were granted to the tenant by order of the court and the duration of that new tenancy were the same as the duration of the new tenancy which is actually granted to the tenant.

(8) In this section and section 24D of this Act "the relevant tenancy" has the same meaning as in section 24A of this Act."

18. In their respective skeleton arguments, Mr Sutherland and Mr Cohen each referred me to a number of cases and also to extracts from Reynolds & Clark: Renewal of Business Tenancies 5th Ed. I discerned no difference between the parties either as to the applicability of those cases to this nor as regards the proposition(s) for which each case is authority and the principles properly to be drawn from them.

19. By reference to the contents of the skeleton arguments, and having perused after the hearing and during the preparation of this judgment the case law and materials to which I was referred, I direct myself as follows in relation to the decisions which I am required to take under sections 33-35 of the Act:

(i) As regards terms other than duration and rent, i.e. those determined under section 35 of the Act:

(a) I must begin by considering the terms of the current tenancy, which do not bind either the Court or the parties, but in relation to which the burden of persuading the Court to impose a change in those terms against the will of either party rests on the party proposing the change;

(b) Any 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;

both per Lord Hailsham in O'May v City of London Real Property Company Limited [1983] 2 A.C. 726 at 740;

(c) The overriding question is whether a proposed change can be justified on grounds of "essential fairness" between landlord and tenant (per Reynolds & Clark: Renewal of Business Tenancies 5th Ed. at ¶8-48);

(ii) As regards term length and the decision to be made under section 33 of the Act:

(a) Each application for renewal of a tenancy turns on its own facts;

(b) The court will seek to confer upon the tenant a term sufficient to protect the tenant in the carrying on of his business; the primary purpose of the legislation is to protect the tenant;

(c) It is perfectly valid for a landlord to seek to maximise the value and marketability of its reversion but any paper diminution will be ignored;

(d) What is likely to be granted in the market is of only limited assistance in assisting the court in determining, in the exercise of its discretion, what is reasonable;

(e) Any rigid policy of either party as to the length of the term to be taken or granted is irrelevant in the exercise of the court's discretion, and;

(f) The determination of the duration of the term is an exercise of discretion with the court seeking to strike a balance between the degree of protection to which the tenant is entitled in the exercise of his business interests and the need to ensure that the decision is neither unfair on or oppressive to the landlord;

all per the discussion between ¶¶ 8-27 and 8-38 of Reynolds & Clark, distilling the decision in Rumbelows v Tameside Metropolitan Borough Council (Unreported, Southport County Court, 11 January 1994);

(g) If a landlord offers a break clause to allay any tenant concerns about length then a longer term is likely to be granted (per, for example, Ganton House Investments v Crossman Investments [1995] 1 E.G.L.R. 239 CC).

(iii) As regards rent and interim rent and the valuation exercise which section 34 of the Act requires:

(a) A "willing lessor" is an abstraction, not the actual landlord, but a hypothetical person with a right to grant a lease of the premises and who wishes to let the premises at an appropriate rent;

(b) Similarly, a "willing lessee" is an abstraction, a hypothetical person actively seeking premises to fulfil his needs;

(c) The fact that both lessor and lessee are "willing" does not mean that they are "anxious" to reach agreement and the negotiations must be assumed to be fair and friendly, but must be conducted in the light of all the advantages and disadvantages which on the relevant date would affect the property and any lessee of the property (per FR Evans (Leeds) Ltd v English Electric Co Ltd (1978) 36 P. & C.R. 185 QBD);

(d) Special bidders are to be taken into account unless the amount they offer constitutes an "overbid" (per Reynolds & Clark: Renewal of Business Tenancies 5th Ed. at ¶8-115 at footnote 267);

(e) Covenants in the lease going to repair and decoration must be assumed to have been complied with by the tenant (per Reynolds & Clark: Renewal of Business Tenancies 5th Ed. at ¶8-137);

(f) The power in s.34 is not a matter of discretion but a matter of valuation;

(g) So far as comparable evidence is concerned, and its role in the valuation exercise which section 34 requires, Forbes J in GREA Real Property Investments v William [1979] 1 E.G.L.R. 121 stated:

"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 those 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 the object chosen for comparison the greater the allowances which have to be made and the greater the opportunity for error."

(h) Where the lease terms of the comparables are unknown, such that no proper comparative exercise with the terms of the proposed lease can be

undertaken, the Court may conclude that there is no reliable comparable evidence of the current open market rent (per Flanders Community Centre v London Borough of Newham [2016] EWHC 1089 (Ch)).

(i) The values for rating shown in the valuation list are not a reliable guide to market value (per Reynolds & Clark: Renewal of Business Tenancies 5th Ed. at ¶8-109);

(j) When calculating the price per square foot, floor areas of comparables for which the relevant tenant, at its own request, designates as having no commercial use are to be excluded (per Newey & Eyre v J Curtis & Son [1984] 2 E.G.L.R. 105);

(k) The commencement of the new lease is, at the earliest, three months from the date of the decision of this Court (per section 64 of the Act) and, for that reason, when determining the rent, regard should be had to matters which could reasonably be expected to happen between the date of the hearing and the date of the commencement of the new term (Lovely and Orchard Services v Daejan Investments Ltd [1978] 1 E.G.L.R. 44) – I am unaware of any such relevant events, or possible events, in the instant case.

Issue (i):

Term

20. The Claimant contends that a 5 year lease would protect its business need to respond to changes in the market over time, particularly in the context of the Covid-19 pandemic which, it is said, gives rise to unpredictable effects in the market. A five year term is also said to reflect current market practice.

21. Mr Sond's written and oral evidence made clear that the Claimant's business model involves its taking on properties which are anchored to particular customer contracts and, against that background, that a longer lease term would carry with it the risk of the property being under-utilised, and potentially becoming a financial liability, in the event that customer contracts were not renewed.

22. In particular, Mr Sond explained that 84% of the Claimant's revenue from the property is attributable to contracts which the Claimant has with 3 customers and which are related to tobacco and vape products. Such contracts are, I was told, always entered into on a 12-month basis, with the current contracts due to expire at the end of 2021.

23. The Claimant's position is that, in circumstances where the annual renewal of such contracts cannot (it is said) be guaranteed, not least because of what is said to be a decline in revenue from tobacco contracts due to changes in social habits and attitudes, there is always a risk that the Claimant will cease to have a use for the property.

24. Such a risk, when combined with more general market uncertainty, is said to make a 5-year term reasonable in all the circumstances and one which, on the Claimant's case, balances the Defendant's interest in certainty with the Claimant's wish not to be tied to

what might at relatively short-notice become an unsuitable property without a guarantee of being able to assign (and with the risk of continued liability in the event of default by an assignee even if assignment proved possible).

25. The Claimant also takes a separate point that higher SDLT liability would arise in the event of a 10-year lease term with no refund being triggered in the event that a break was exercised at 5 years.

26. The Defendant's rationale for seeking a 10 year term with a tenant-only break right on the fifth anniversary of the term relates to business certainty and investment value.

27. In his witness statement and oral evidence, Mr Wakefield asserted that such a lease would be valued with more certainty than the Claimant's shorter proposal which, given the Defendant's role as a fund which exists to generate a return to pension fund investors, makes the longer proposed duration desirable from its perspective.

28. In addition, Mr Wakefield explained that a 10 year lease term with a 5 year break would provide, by virtue of the 12 months' notice provision for such a break, greater investor certainty and comfort than would be the case with a single 5 year term (at the end of which the Claimant could vacate or remain without having to provide advanced notice of which option it intended to pursue).

29. The benefit of advanced notice under the Defendant's proposals would, it was said, be that the Defendant could make preparations in advance for re-letting and any necessary remedial works, which opportunity would potentially be denied to it under the Claimant's proposal.

30. As already indicated, the Defendant has proposed a tenant-only 5 year break clause. Mr Wakefield made clear in his evidence that the Defendant's general preference would be for a full 10 year term with no break right (as per the current lease) because such a provision would be yet more valuable in investment terms. However, his evidence was that the Defendant had sought to accommodate the Claimant's need for greater flexibility than that by proposing the tenant break at 5 years.

31. I have reached the clear conclusion that the Defendant's proposals as to the term of the new lease are reasonable in all the circumstances and ought to be preferred to those advanced by the Claimant. I reach that conclusion for the following reasons:

    (i) The Claimant's ability to carry on its business is, in my judgement, as protected by the Defendant's proposal as by its own: neither party's proposal would result in a lease term of less than 5 years and, to the extent that the Claimant is concerned that the annual contracts from which it derives the vast majority of its revenue at the premises might not be renewed, such that the property then became commercially less/non-viable, only a very much shorter lease term would in my judgement in this respect afford significantly greater protection to the Claimant's business (as Mr Sond in effect conceded when he gave oral evidence that his personal preference would, for this very reason, be for a much shorter lease term) but no such duration has been proposed by the Claimant;

(ii) To order a 5 year lease term would be to deprive the Defendant of the certainty which its proposal brings and which, in my judgement, it reasonably seeks for cogent reasons: the 5 year term sought by the Claimant would deprive the Defendant of such certainty without conferring any greater commercial protection to the Claimant and, therefore, would not in my judgment result in the Court striking the correct balance between the parties' interests on the facts of the instant case;

(iii) To the extent that the Claimant's concerns regarding the possible non-renewal of annual contracts mean that a lease length of greater than 5 years would inadequately protect its ability to carry on business, and/or would result in an imbalance between the parties' interests, the Defendant's offer of a break clause at 5 years is, in my judgement, sufficient to allay any such difficulties. Mr Sond, during cross-examination by Mr Cohen, conceded that, in terms of the risk(s) to which the possible cessation of annual customer contracts give(s) rise, and leaving aside the SDLT implications, the Defendant's proposed term afforded equal protection to the Claimant. I agree with him;

(iv) The remaining point taken by the Claimant regarding SDLT is not in my judgement sufficient to tip the balance in its favour. It is correct that a 10 year term, even with a 5 year break clause, carries with it a higher SDLT liability, as the table at paragraph 15 of Mr Sond's supplemental witness statement demonstrated. However, this alone does not in my judgement mean that I should exercise my discretion in favour of a 5 year lease because:

(a) There was no suggestion in either the evidence or submissions that payment of the additional sum would imperil or adversely affect in a meaningful way the Claimant's business;

(b) As Mr Cohen submitted, it is no more than a contingent risk of paying more (in the sense that the 'additional' element of the SDLT payment only in fact arises in the event that the Claimant breaks at 5 years whereas, if it does not, it will have paid the appropriate SDLT for a 10 year term);

(c) There is likely to be some benefit to the Claimant in paying a single sum of SDLT for a 10 year term now, by comparison with a hypothetical scenario in which it obtained a 5 year lease at this stage but then wished again to renew for a further 5 years at the expiry of the first period (because the SDLT liability would at that time probably be higher – given the likelihood of higher rent – assuming that the SDLT regime had not been changed in the interim).

32. For all of the foregoing reasons, a 10 year term with a tenant-only break clause at 5 years is in my judgement the lease term which is reasonable in all the circumstances.

Issue (ii):

Alteration

33. The Defendant's justifications for the proposed additional wording at clauses 3.14.3, 3.14.5 and 3.14.6 are in essence as follows:

    (i) It has the responsibility of complying with the energy efficiency regulations and, as such, reasonably requires a mechanism by which the actions or omissions of the Claimant and/or any other occupiers of the property can be regulated so as to ensure that the Defendant is not placed in breach of the regulations through no fault of its own;

    (ii) The consequences of the energy rating of the property falling below the minimum standard of 'E', and thus becoming a sub- standard property, would be significant in that:

        (a) The Defendant would then require an exemption to be able to continue letting the property (which exemptions are only temporary and may not be capable of being obtained): regulation 27, and;

        (b) the Defendant would be placed at risk of having to pay a significant financial penalty in the event that regulation 27 was breached: regulations 38 and 41 (3);

    (iii) It is therefore said to be fair and reasonable for the Claimant to be required:

        (a) Not to carry out alterations or additions to the premises which would result in them being designated as a sub-standard property (as clause 3.14.3 provides), and;

        (b) To indemnify the Defendant for the cost of obtaining a new EPC if alterations by the Claimant and/or another occupier(s) invalidate or adversely affect it (as clause 3.14.5 provides), and;

        (c) To maintain the current EPC rating, return the premises to the Defendant with the same EPC rating as it now has, and promptly to carry out remedial works to restore the EPC rating if it does fall below the current level (as clause 3.14.6 provides).

34. I entirely accept that it is reasonable for the Defendant to wish to have protection against the undoubtedly adverse consequences for it which an energy rating below 'E' would or could bring. I am not persuaded, however, that there is any reasonable need for all of the new clauses which the Defendant proposes in order that sufficient protection is in this respect afforded to it.

35. I accept Mr Sutherland's submission that the current wording at clauses 3.14.1 and 3.14.2 affords sufficient protection to the Defendant against positive acts by the Claimant which might reduce the EPC rating. By those clauses, the Claimant is prohibited from making alterations to the structure of the premises and any alterations

which affect their external appearance and cannot, without the Defendant's consent, make *"any other alterations or additions to the Premises without the Landlord's written consent (not to be unreasonably withheld or delayed)."* 'Premises' is a defined term within the lease and is widely defined (including, for example, all of the Defendant's fixtures and fittings and all alterations and additions thereto).

36. In my judgement, those existing provisions would make it difficult – though, I accept, not impossible – for the Claimant to take steps which would have the effect of reducing the EPC rating so as to make the property sub-standard. I have therefore concluded that there is no reasonable requirement for the proposed clause 3.14.3.

37. In my judgement, the Defendant's proposed clause 3.14.5 would, if permitted, place too significant a burden on the Claimant and would do so in circumstances where, as Mr Sutherland in my judgement correctly observes and submits, the bulk of the obligations contained in both the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 3118) and the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 962) are expressly placed upon Landlords and not upon Tenants.

38. I agree with him that, if permitted, this clause, and the totality of the Defendant's proposed clauses (i.e. clauses 3.14.3, 3.14.5 and 3.14.6), would unfairly and unreasonably impose upon the Claimant a number of duties which are in law actually the Defendant's. For the same reasons, I have concluded that the maintenance and remedial duties which would be imposed upon the Claimant if the entirety of the proposed clause 3.14.6 was permitted would place upon them too high a burden and would not amount to a fair and reasonable change to the lease.

39. I am, though, persuaded that the first part of the proposed clause 3.14.6, which reads *"The Tenant shall return the premises to the Landlord with the same EPC rating as it has at the date of this Lease as evidenced by the EPC dated 1 June 2021"* ought to be permitted on the basis that its inclusion can be justified on grounds of essential fairness and that it is a fair and reasonable change. Without this clause, the Defendant would, in my judgement, lack any meaningful protection against omissions/inaction by the Claimant which could, during the course of a potential 10 year lease duration, reduce the EPC rating such that the property became sub-standard and, in consequence, bring about for the Defendant the significant adverse consequences referenced above.

40. I accept that the wording which I am prepared to permit does not afford the Defendant complete protection, particularly because it does not provide for immediate remedial action in the event that the Claimant causes or allows the property to become sub-standard. However, as stated repeatedly above, I must assess whether the proposed changes are fair and reasonable and can be justified on the grounds of essential fairness. I have concluded that to go further than I have done would fail to strike a fair and reasonable balance between the parties because it would unreasonably burden the Claimant and unfairly advantage the Defendant.

41. For those reasons, I am not persuaded that proposed clauses 3.14.3 and 3.14.5 should be included in the new lease but have concluded that the first part of proposed clause 3.14.6, detailed above, ought to be permitted.

Issue (iii):

Alienation

42. The Defendant's principal concerns with the Claimant's proposals in this respect (which would, as summarised above, permit the Claimant to share occupation of whole or part of the premises not only with a Group company – as the lease presently permits – but also with a customer and/or a third party logistics company ("3PL")) are:

    (i) The risk of such a customer/3PL acquiring security of tenure and the alleged likelihood, were that to happen, of the Defendant encountering in consequence a range of difficulties, for example removing the customer/3PL from the premises if it so wished, and;

    (ii) The uncertainties and difficulties to which it is said shared occupation would or might give rise, for example health and safety concerns about what other goods were to be/were being stored in the premises in proximity to the large quantities of tobacco products which the Claimant presently stores there.

43. Mr Sond's evidence was that the primary reason for the Claimant seeking this change to the current lease terms was to enable it to offer to customers, and/or to 3PLs working with customers, a licence to occupy part of the property in the event that either the customer and/or 3PL working with the customer required additional space as a result of increased demand and the Claimant had spare space within the property to offer.

44. He also stated that the arrangement would enable the Claimant to reduce the cost of any unoccupied space and would, as a result, generate positive returns for the business. In addition, Mr Sond pointed again to the fluctuations and uncertainties in the retail market resulting from the measures taken to combat the Covid-19 pandemic and told me that the arrangement, if permitted, would afford the Claimant flexibility to respond to changing demand(s).

45. Without the change, Mr Sond's evidence was that:

    (i) The Claimant would be disproportionately hampered in carrying out its business operations, and;

    (ii) Such a detriment could worsen in coming years, because the increased demand for online retail services would be likely to cause a need for customers and/or 3PLs to increase their storage capacities generally and would also likely result in customers seeing benefits in sharing storage premises with a 3PL such as the Claimant, and;

    (iii) Such opportunities as thereby resulted would not be ones which the Claimant could pursue at and from the property.

46. I am persuaded that Mr Sond's evidence, as summarised above, demonstrates that the Claimant has a reasonable need to share occupation of part of the property and, therefore, has shown a reasonable basis for the proposed change to the lease wording to that extent. I am satisfied that, if permitted, a sharing clause enabling the Claimant

to share occupation of part of the property would serve to protect the Claimant's business in the ways set out by Mr Sond.

47. I do not accept Mr Cohen's submission that the Claimant's interest in seeking the new lease wording is solely to make a profit rather than also to avoid a detriment. I instead accept Mr Sond's evidence in this respect: the Claimant acknowledges, unsurprisingly, that it would seek to make a profit from sharing the property with a customer and/or 3PL but also asserts that it wishes to do so precisely in order to guard against such adverse market events as may in the short term arise in the context of the Covid-19 pandemic and, in the longer term, to ensure that it is not disadvantaged in a market which is likely to become ever more focused on online retail and the consequent need for increased storage space.

48. I am not, however, persuaded that the Claimant has, or has shown through Mr Sond's evidence or otherwise, any reasonable need to allow a customer and/or a 3PL to occupy the property in its entirety rather than one or more such companies sharing occupation with the Claimant. I therefore accept Mr Cohen's submission that the new lease ought not to permit occupation of the whole property by an entity (or more than one) other than the Claimant.

49. Nothing in Mr Sond's witness statements, nor in his oral evidence, was directed at the issue of occupation of the whole property by a customer/customers and/or a 3PL/3PLs and, in those circumstances, I decline to permit the new lease wording to extend that far on the basis that the Claimant has in this respect failed to discharge the burden upon it of persuading the Court to impose a change to which the Defendant objects.

50. I consider that the business reasons advanced by the Claimant in favour of allowing sharing of the property, about which I am (as stated) persuaded, are fully met by shared occupation being permitted and would not on the evidence I have seen and heard be further advanced by permitting sole occupation of the property by a customer/customers of the Claimant's and/or a 3PL/3PLs.

51. The issue which I must therefore consider next is whether the proposed lease terms – which were updated not long prior to the trial – afford the Defendant sufficient protection against the concerns which it legitimately has as to the risks of a customer/3PL acquiring security of tenure and the risks arising from any uncertainty as to which customer/3PL, undertaking what sort of activity, is in occupation. Absent sufficient protection in these respects, it is unlikely that the proposed change would be justified because it would not be fair and reasonable nor achieve essential fairness as between the Claimant and Defendant.

52. The updated proposed wording (from the Claimant) is worth quoting in full:

"3.16.6

Customer means a bona fide customer of the Tenant with whom the Tenant has a contractual relationship

Notwithstanding clause 3.16.1 the Tenant and/or any undertenant may share occupation of the whole or any part of the Premises with any Group Company or with

a Customer of 3PL using the Premises in connection with the Tenant's business and in accordance with the Permitted Use provided that:

(a) the Tenant shall not part with possession of the whole or any part of the Property;

(b) the relationship of landlord and tenant is not created;

(c) occupation by any Group Company shall cease upon it ceasing to be a Group Company and occupation by a 3PL or a Customer shall cease if the contractual relationship between the Tenant and the Customer and/or the Tenant and 3PL ceases;

(d) the Tenant informs the Landlord in writing before each occupier commences occupation and after it ceases occupation;

PROVIDED further that in relation to the occupation of a Customer or 3PL:

(e) the Tenant will provide to the Landlord evidence of the relevant contractual relationship (redacted as required by the Tenant to protect commercially sensitive or confidential information);

(f) the Tenant shall provide a written update on demand from the Landlord with full details of the entities in occupation and (if not previously provided) of the relevant contractual relationships (redacted as required by the Tenant to protect commercially sensitive or confidential information);

(g) the arrangement is by way of licence and is personal to the parties; and

(h) the Customer or 3PL shall not erect any sign, notice, trade posters or advertisement to the exterior or interior of the Premises."

53. I am satisfied that these provisions, which closely mirror those proposed by the Defendant in the event that I decided that the alienation clause ought to be widened to permit sharing of the property with a customer of the Claimant and/or a 3PL, afford the Defendant a significant, and sufficient, degree of protection both as to the risk of any occupier other than the Claimant acquiring security of tenure and any risk(s) arising due to uncertainty about either the identity and/or the business activities of any such occupier.

54. In my judgement, therefore, the new Clause 3.16.6 should read as follows so as to enable sharing of only part of the premises by a customer and/or 3PL (the wording below mirrors the Claimant's updated proposal save that the permission to share the whole of the premises is deleted and replaced with the Defendant's updated proposed wording in that specific respect):

"3.16.6

Customer means a bona fide customer of the Tenant with whom the Tenant has a contractual relationship

Notwithstanding clause 3.16.1 the Tenant and/or any undertenant may share occupation of part of the Premises with any Group Company or with a Customer of 3PL using the Premises in connection with the Tenant's business and in accordance with the Permitted Use provided that:

(a) the Tenant shall not part with possession of the whole or any part of the Property;

(b) the relationship of landlord and tenant is not created;

(c) occupation by any Group Company shall cease upon it ceasing to be a Group Company and occupation by a 3PL or a Customer shall cease if the contractual relationship between the Tenant and the Customer and/or the Tenant and 3PL ceases;

(d) the Tenant informs the Landlord in writing before each occupier commences occupation and after it ceases occupation;

PROVIDED further that in relation to the occupation of a Customer or 3PL:

(e) the Tenant will provide to the Landlord evidence of the relevant contractual relationship (redacted as required by the Tenant to protect commercially sensitive or confidential information);

(f) the Tenant shall provide a written update on demand from the Landlord with full details of the entities in occupation and (if not previously provided) of the relevant contractual relationships (redacted as required by the Tenant to protect commercially sensitive or confidential information);

(g) the arrangement is by way of licence and is personal to the parties; and

(h) the Customer or 3PL shall not erect any sign, notice, trade posters or advertisement to the exterior or interior of the Premises."

55. I accept Mr Sutherland's submission that the additional provision, which was contained within the Defendant's proposed wording at sub-paragraph (g) in the event that I found as above, but which was not replicated within the updated wording advanced by the Claimant, is unnecessary.

56. This would have required the Claimant, in conjunction with any customer or 3PL with which it proposed to share occupation, also to take steps validly to exclude the operation of sections 24 and 28 of the Act and to evidence to the Defendant such exclusion. Mr Sutherland submits, and I accept, that in circumstances where no landlord and tenant relationship will, by virtue of the protections afforded to the Defendant by the new lease terms, arise between the Claimant and a customer and/or 3PL with which it shares occupation no such term is reasonably required.

57. For those reasons, I am persuaded that a new Clause 3.16.6 permitting the Claimant to share occupation of part of the premises as above ought to be permitted.

Issue (iv):

Indemnity

58. The Claimant asserts that the Defendant is prohibited from seeking changes to Clause 3.24 having previously agreed the Claimant's proposal (namely that the Clause in the current lease remain unaltered) and, it is said, being bound having done so to that agreement.

59. In addition, the Claimant contends that the Defendant has shown no good reason for extending the wording in the way now proposed – i.e. to add to the current wording the additional words *"losses, expenses, financial penalties whether direct, indirect or otherwise"* – and, therefore, that the change to the current terms of the lease ought not to be permitted (the current wording providing, so the Claimant says, sufficient protection to the Defendant in any event).

60. The Claimant is correct to observe that the Defendant has put forward essentially no evidence in support of the proposed change. Neither of Mr Wakefield's witness statements addresses the issue at all. It may be that this is simply a consequence of the time at which the proposed amendment was first advanced (shortly prior to the trial) but it remains the case that the witness statements are silent on the point. Nor did Mr Wakefield give any oral evidence on the topic.

61. In the updated schedule of disputed lease terms, the Defendant asserts that the changes to the indemnity wording are no more than reasonable modernisation which would, it is said, bring the new lease into line with what is said to be market standard wording in this respect.

62. In addition, the Defendant there contends that the amendment is designed to ensure that the Claimant cannot take what is described as a "technical argument" that the sums incurred by the Landlord as a result of any breach of the Claimant's obligations under the lease, and against which the Claimant agrees to indemnify it, are not "costs" (that being the word used in the current version of the lease).

63. In my judgement, the Defendant has not advanced any, or any sufficient, evidence to discharge the burden upon it when proposing a change to the current lease wording. I am not therefore persuaded that I should permit the new proposed wording and decline so to do. Clause 3.24 shall therefore remain in the form of the current lease.

64. Having reached that conclusion, I need not decide the question of whether the Defendant was prohibited from seeking to advance a proposal for change having previously agreed to the current wording.

Issue (v):

Rent

65. In the claim form, the Claimant contended that the rent should be £775,000 per year. The rent under the current lease was £760,000 (the claim form refers to the current rent

being £775,000 but that is, I think, an error). At all events, the Claimant's position at the outset of this claim was that the rent under the new lease either ought to be the same as the current rent, or slightly higher than it.

66. By the time of the trial, however, and in reliance upon the expert evidence of Mr Alderton, the Claimant's case was that the rent should be £687,000 per year (this being the updated figure in Mr Alderton's second report, the figure in the first report having been £650,000 per year).

67. The Defendant, relying upon Mr Neaves' expert evidence contended for £852,000 per year (a figure which Mr Neaves had advanced in both of his reports).

68. I remind myself that my task is to value the rent which the property, let under a lease containing the terms which I have determined above, might reasonably be expected to achieve in the open market if let by a willing lessor to a willing lessee. I do not have, and may not exercise, any discretion about what might be an appropriate rent; instead, with the benefit of expert evidence addressing (but not itself determining) the rental valuation, I must decide what annual rent might reasonably be expected in the circumstances which the Act describes.

69. Although the issue of rental valuation is ultimately for the Court to determine, my determination of the issue will clearly be informed and influenced by the expert evidence which I have heard and, accordingly, I must assess the respective quality and reliability of the evidence given by Mr Alderton and Mr Neaves.

70. In his opening skeleton argument, and again in his oral closing submissions, Mr Cohen on behalf of the Defendant submitted forcefully that Mr Alderton's opinion and process of reasoning was in multiple respects flawed and that, overall, his evidence was either a function of inexperience as an expert witness or, otherwise, a loss of impartiality.

71. I regret to say that I formed the clear impression, having listened to and observed Mr Alderton's answers to the questions which Mr Cohen put to him during a sustained and skilful cross-examination, that he had indeed lost sight of the need for impartiality.

72. My very clear assessment was that he approached the task of giving his evidence as an exercise in attempting to defend and to justify his own opinion and, in so doing, seeking to achieve for the Claimant a lower rental valuation, rather than, as it ought to have been, an exercise in assisting the Court in determining what rent might reasonably be expected for the property pursuant to the statutory test.

73. By contrast, I formed the equally clear impression that Mr Neaves at all times remained fully cognisant of his duties to the Court as an expert witness, including the need for impartiality, and approached his task properly with a view to assisting the Court in determining the rental valuation under the Act. I was therefore able to conclude that I could and should place much greater weight upon, and have significantly greater confidence in, his evidence where it differed from Mr Alderton's.

74. Although Mr Cohen advanced detailed and wide-ranging submissions as to the multiple flaws in Mr Alderton's reasoning and conclusions, each of which in my judgement had force, it is the cumulative effect of the following principal matters that leads me to

conclude that the reliability of Mr Alderton's evidence was undermined and that his opinions accordingly ought to be rejected where they differ from those of Mr Neaves:

(i) The repeated use, in Mr Alderton's written evidence, of inappropriate, often tendentious, and in my judgement ultimately inaccurate language to characterise Mr Neaves' evidence, all of which gave me the strong impression of someone – forcefully – arguing a case rather than giving independent expert opinion designed to assist the Court. For example (and with emphases added in italicised text):

(a) At page 257 he stated that the Defendant's position on rental value was "*completely indefensible*";

(b) At page 266 he suggested that Mr Neaves (and, depending on how one reads the sentence, possibly any expert instructed by a landlord) would seek to give a "*misleading impression*" of low site density by adopting a particular arithmetical approach to the site density issue with which Mr Alderton disagreed, which approach and conclusion Mr Neaves did not in fact adopt as shown by the similar site density calculations undertaken by each expert in the joint statement at page 362;

(c) At page 274, he predicted that Mr Neaves would opine that the property had a good ratio of doors by adopting an arithmetical approach with which Mr Alderton again disagreed and, in so doing, would be "*at best naïve but more likely disingenuous*";

(d) At page 277, when discussing the office content of the property, he stated that his experience was that "*landlord's Experts inevitably try to manipulate office content to try to suit their case rather than valuing objectively*";

(e) At page 278, when discussing fixtures and fittings, he stated "*I am sure the landlord's expert will claim that all of the fixtures and fittings in situ are a highly valuable "addition" and of great "value""*;

(f) At page 284, when discussing his second comparable (the former Maplins building at Brookfields Way in Rotherham) he stated *"I understand that the landlord's expert is going to claim that the new tenant did not want all the offices and therefore this floor area should be deducted in the analysis of the transaction. This is a misleading and blatant attempt to manipulate and inflate the rental payable on the building."*;

(ii) The lack of any specific or detailed reasoning as to why his valuation was lower both than the rent payable under the previous lease and the rent proposed by the Claimant in the claim form: it may well be that, in a particular case, various reasons exist which might justify and support a lower rental valuation than previously pertained, and/or than was previously advanced by a Claimant in litigation, but by the end of Mr Alderton's evidence there was nothing which

informed me whether in his opinion such reasons existed here and, if so, what they were;

(iii) The approach taken by Mr Alderton as to the appropriate size of other properties which could properly be compared with the index property for the purposes of valuation, which involved the:

(a) Adoption in his written evidence of an approach which confined his selected rental valuation comparator properties ("comparators") to those falling within a range of 150,000 – 250,000 square feet on the logic that the index property is 180,000 square feet in size and, therefore, that comparators falling between 100,000 – 150,000 square feet would be too small to make them relevant in the comparison exercise, such properties allegedly existing within a different market, whilst those at or greater than 300,000 square feet would be too large and thus also inappropriate as comparators (there purportedly being a different market for such larger properties too);

(b) Eventual concession, after lengthy cross-examination which rightly focused on the lack of evidence in or appended to his report to demonstrate the existence of such different/sub-markets in respect of these smaller and larger properties, that the approach in his report had been wrong and that, instead, an approach which drew comparators from a much wider range of properties falling within the size band 100,000 - 350,000 square feet, with a significant rental premium only attaching to those larger units in excess of 350,000 square feet and, potentially, a small(er) premium attaching to those above 250,000-300,000 square feet, was proper;

(c) Critical difficulty which this concession created, namely that this broader approach to the methodology of selecting appropriate comparators had not been the one adopted in his reports and, therefore, was not the one which underpinned the totality of his evidence;

(iv) His apparent inability, or unwillingness, to engage with relatively basic (sometimes hypothetical) propositions which Mr Cohen quite properly put to him when seeking to test his evidence in cross-examination and then oral evidence resulting from such exchanges which, in my judgement, was at times illogical. For example:

(a) Mr Cohen suggested that the market perceives a rental premium in a property protected by the Act by comparison with an otherwise identical property which lacked such protection (i.e. that the rent would be higher in the former than the latter) but Mr Alderton was unable to accept this (to my mind relatively uncontroversial) proposition, citing instead his experience that leases of the lengths proposed in the instant case were usually subject to protection under the Act (which may well be correct but, in my judgement, ought not to prevent an experienced expert hypothesising about what the likely effect on rent would be in the event that a given property lacked such protection);

(b) Mr Cohen suggested that if there were two otherwise identical units, available to rent under identical lease terms, but one was fitted out whereas the other was not, then one would generally expect the rent in the unfitted property to be slightly lower to account for both the cost and time involved in fitting it out. Mr Alderton suggested that such an approach was too simple and that, instead, one had to consider such matters as the fact that a fitted out unit will, in the market, likely be second hand whereas an unfitted unit will generally be new, and that one must also assess the actual value, or lack thereof, to a particular tenant of the fittings (and, if relevant, the quality of the fittings) in situ. Again, these factors might well be relevant when determining whether, in a particular proposed deal, with a known proposed tenant, any additional rent would arise from the fitted status of a property and, if so, how much, but none of them in my judgement ought to have prevented Mr Alderton, acting as an expert witness in litigation, being able to consider at a more general level whether the fitted out status of a property will generally attract a slightly higher rent by comparison with an unfitted property.

(c) His eventual evidence on this issue, which was somewhat difficult to follow, was that if valuing the likely rent on a fitted unit such as the index property one should properly subtract 3 months' rent from any unfitted comparator to allow for fitting out but should not also adjust the respective rental valuations to account for the cost of fitting out. Mr Alderton had no satisfactory answer to Mr Cohen's basic point in response that, by doing the former, he was properly conceding that there was a benefit in principle to a tenant in a building being fitted out (i.e. not having to spend 3 months fitting out an unfitted property) whereas, by doing the latter, he was failing to concede the unavoidable concomitant that the further benefits to a tenant of renting a fitted out property (i.e. not having to incur the material and labour costs of a fit out) need also to be reflected in the rental valuation. In the instant case, that approach would involve placing no value on the fit out of the index property despite the cost of the fittings amounting to between approximately £1.8 million and £2 million (see the table at Appendix C to Mr Neaves' second report at page 1053), which would in my judgement be illogical, and particularly so if one was at the same time adjusting the rental valuation of the index property (as Mr Alderton conceded one properly should) to account for the 3 month period which would otherwise be required to fit it out;

(d) Mr Cohen suggested that the table at page 642, upon which Mr Alderton relied at page 269 in his report to evidence the proposition that demand in the Yorkshire and Humberside region is for significantly larger units than the index property and those falling within a smaller range of 100,000 – 250,000 square feet, in fact showed only take up of properties and said nothing about demand (or the lack thereof) for units sized between 100,000 – 250,000 square feet. This proposition was to my mind plainly correct because the table did not state how many units, and of what size, were available in the period covered (2017-2020) and,

therefore, could shed no light on how many "smaller" units were available to let (or not) and were rented (or not). Despite this, Mr Alderton was unwilling to accept that the table alone did not provide support for the proposition which he had, on the basis of it, advanced (although he did eventually concede that, since the time of preparing his report, all properties within a size range of 150,000 – 200,000 square feet had been let). Mr Cohen, in my judgement correctly, suggested this fact was evidence of strong current demand, at least relative to supply, for such properties in the area but Mr Alderton was again unwilling to accept this straightforward proposition;

(v) Mr Alderton's ignorance, revealed for the first time during cross-examination, of the works which the Claimant undertook in 2017 to the index property, particularly the roof and cladding – which were referenced at ¶14 of Mr Wakefield's witness statement – and his exclusion, therefore, of these (in my judgement ostensibly relevant) factors from his process of reasoning and rental valuation;

(vi) His approach, evidenced for example at page 363 in the joint statement, of valuing the building on the basis that it is 40 years old and that the fit out is at least 15 years old (that figure being taken from the Schedule of Condition of the fit out prepared in 2005) and accordingly gives rise to a risk of significant repair and/or maintenance costs being generated due to its age, which approach in my judgement improperly ignored both:

(a) The fact of the Claimant's repairing and redecoration obligations under the current lease (there being no suggestion that such obligations have not been complied with), and;

(b) The fact that the 2005 Schedule of Condition itself describes the fittings as all being in fair or good condition (such that, in my judgement, the appropriate starting point when valuing the property is that they remain so now by virtue of having been properly maintained and, thus, that any future repair or maintenance costs must be seen in that context);

(vii) The underlying assumption which Mr Alderton made as to the index property's location and, specifically, whether it is properly to be characterised as, and valued on the basis of, being in the M1 corridor or, as Mr Alderton opined, in the M18 corridor which, he opined, was a "totally different" geographical location (see that description at page 365 in the joint statement) and occupied a different position in the market attracting different rents. I am quite satisfied that, as Mr Neaves opined, the index property's location, being less than 1 mile from junction 1 of the M18, and via the M18 less than 4 miles from junction 32 of the M1 which enables northbound and southbound access onto that motorway, is such that the rental valuation should include a premium, even if not one as large as for properties with closer/near-direct access to the M1, for the relative ease of access to the M1 which it offers but which comparator properties situated further north along the M18 would not have nor attract and that Mr Alderton's refusal to approach the valuation in this way (instead valuing

the location of the index property in essentially the same way as comparators situated further north on the M18) was unjustified and illogical.

75. For all of the above reasons, I have reached the clear conclusion that Mr Neaves' evidence as to the rental valuation is to be preferred over that given by Mr Alderton.

76. For that reason, I am satisfied that the annual rent which ought to be paid under the new lease, assessed (as required) by reference to a time 3 months following the date of circulation of this draft judgment, is that proposed by Mr Neaves, namely £852,000 per year.

77. There is no dispute that the interim rent ought also to be set at the same amount and I so direct.

Conclusion

78. The terms of the new lease, and the rent payable under it, shall be as set out above and for the reasons given.

79. This judgment will be handed down at a hearing, which may be a remote hearing in accordance with the Covid-19 Protocol, on a date to be fixed.

80. The time for appealing the judgment shall not start to run until it is handed down. Practice Direction 40E of the CPR shall apply.

81. The parties should seek to agree the form of an order and any consequential directions arising from this judgment and, if they can do so, the attendance of counsel and solicitors at the handing down will be excused.

82. Absent agreement, the parties should prepare and file an agreed list of issues which require determination at the hearing and should indicate to the Court an estimated length of hearing and any preference(s) as to mode of hearing.

83. If the hearing is conducted remotely, any party wishing to attend should file a list of participants and their e-mail addresses.