Case No: J80LS043

IN THE COUNTY COURT AT LEEDS
BUSINESS AND PROPERTY COURT WORK

The Court House
Oxford Row
Leeds LS1 3BG

Before Her Honour Judge Kelly

Between:

(1) GT MOTORING SOLUTIONS LIMITED **(2) SHEFFIELD CAR SHOP LIMITED**	**Claimants**
- and -	
(1) GARETH SINCLAIR WILLIAMS **(2) JUSTIN SINCLAIR WILLIAMS** **(AS TRUSTEES OF THE MCLEAN APPLETON** **(SELF ADMINISTERED) PENSION PLAN)**	**Defendants**

Mr Bruce Walker (instructed by **Bevan Brittan LLP**) for the **Claimants**
Mr Brynmor Adams (instructed by **Blackstone Solicitors**) for the **Defendants**

Hearing date: 1 December 2022
Date draft circulated to the Parties: 22 December 2022
Date handed down: 9 January 2023

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APPROVED JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 10:00am on Monday 9 January 2023.

Her Honour Judge Kelly

1. This judgment follows the hearing of the preliminary issue trial in business lease renewal proceedings as to whether the Defendants (sometimes referred to in this judgment as "the landlords" or "the trustees") can prove an intention to demolish and reconstruct on termination of the Claimants' lease pursuant to ground (f) of section 30(1) of Part II of the Landlord and Tenant Act 1954 ("the 1954 Act").

2. The case was listed for one day on 1 December 2022. I had the benefit of hearing Mr Bruce Walker of counsel for the Claimants and Mr Brynmor Adams of counsel for the Defendants. Both Counsel relied upon skeleton arguments provided before the trial. Mr Adams had been instructed at short notice and therefore relied upon the skeleton argument provided by counsel previously instructed.

Background

3. The dispute concerns business premises at Abbeydale Road South, Dore, Sheffield S17 3LH ("the premises"). The Claimants are the tenants of the landlords pursuant to a lease of the premises dated 20 September 2011 for 10 years from the date of the lease to 19 September 2021.

4. The Defendants hold the freehold of the premises as trustees of the McLean Appleton (Self Administered) Pension Plan ("the trust"). The Defendants did not produce the deed of trust in evidence.

5. The background facts to the matter are essentially not in dispute. The following chronology is of assistance:

Date	Event
20/09/11	Lease granted. The lease did not reserve the right for the landlords to enter the premises for the purposes of obtaining surveys and reports on the premises.
02/12/20	Email from Mr Williams to the Claimants stating the landlords' intention to seek planning permission and then sell the premises with the benefit of that planning permission.

03/12/20	The landlords served on the Claimants a notice to terminate the tenancy created by the lease and specified the date of termination as 19 September 2021. The landlords also said they opposed the grant of a new lease relying upon section 30(1)(f) of the 1954 Act.
From January 2021	The Claimants refused access to the landlords to the premises for the purposes of obtaining surveys and reports.
13/09/21	The Claimants applied for the grant of a new lease of the premises by issuing these proceedings.
01/11/21	The landlords filed a defence opposing the claim for the grant of the new tenancy of the premises relying upon section 30(1)(f) of the 1954 Act. The landlords set out in the defence that they intended to obtain planning permission, demolish and sell the bare site to a developer.
27/05/22	Order of District Judge Goldberg. The order included the listing of the preliminary issue and witness statements of fact concerning the preliminary issue to be filed sequentially with the landlords serving their evidence first. Expert evidence was neither sought by any party nor permitted by the order.
12/07/22	The witness statement of Mr Williams set out that the landlords' intention was now to seek a combined planning permission both to demolish the premises and to reconstruct 53 age-exclusive apartments ("the project") themselves. The witness statement of Mr Justin Sinclair Williams ("Mr Justin Williams") agreed and supported the evidence of Mr Williams. The landlords also rely upon a statement from their architect, Ms Taffy Sikoki ("Ms Sikoki").

09/08/22	The Claimants did not file or serve a witness statement in response to the witness statements of the landlords in respect of the preliminary hearing in time. Contained within the bundle was a witness statement from Mr Greg Ellis Thompson ("Mr Thompson"), sole director and shareholder of the two claimant companies, dealing primarily with why he refused access to the premises for the purpose of the landlords obtaining reports. He was not called to give evidence.
01/12/22	Preliminary hearing.

6. I have had the benefit of reading the landlords' witness statements from Mr Williams, Mr Justin Williams and Ms Sikoki , together with the various documents to which I was taken during the course of the trial and directed to in skeleton arguments.

7. During the trial, I had the benefit of hearing oral evidence from Mr Williams and Ms Sikoki for the landlords. The parties had agreed not to call Mr Justin Williams on the basis that his witness statement was short and supportive of the statement made by Mr Williams. The parties and I agreed to assume that any oral evidence given by Mr Justin Williams would simply replicate that which would in fact be given by Mr Williams when he gave oral evidence. There was also a witness statement in the bundle from the director of two Claimant companies, Mr Thompson. There was no oral evidence for the Claimants.

8. This is a case which does not solely turn on the credibility of the oral evidence, but also on the documentary evidence contained within the trial bundles. I do not propose to rehearse all of the arguments raised, nor all of the evidence referred to during the course of the hearing. However, I record that I read and considered the evidence as a whole, as well as various documents within the trial bundle to which my attention was drawn, in addition to the skeleton arguments and all oral submissions before coming to my decision.

The Law

9. Happily, counsel largely agree on the legal principles, even if they disagree as to whether some of the principles apply on the facts of this case.

10. By section 25 of the 1954 Act, a landlord can serve a statutory notice setting a termination date for a tenancy which is not earlier than the term date of the tenancy. However, by section 24 of the 1954 Act, the tenancy does not come to an end unless it is terminated in accordance with the provisions of the 1954 Act. Section 24(1) of the 1954 Act allows a tenant to apply to the court for a new tenancy if the landlord has served a section 25 notice. By section 29A(1)(a) and 29A(2)(a), any such application must be made by the termination date specified in this section 25 notice. By reason of section 64 of the 1954 Act, the tenancy then continues until three months after the court proceedings are finally determined.

11. In addition to the 1954 Act, I was also referred to extracts from Woodfall on Landlord & Tenant and Reynolds & Clarke's Renewal of Business Tenancies (6th Edition) ("Reynolds"). In addition to the cases mentioned in the various extracts, I was also referred to the following cases:
    (1) *Gregson v Cyril Lord Ltd* [1963] 1 WLR 41
    (2) *Fleet Electrics Ltd v Jacey Investments Ltd* [1956] 1 WLR 1027
    (3) *Cunliffe v Goodman* [1950] 2 KB 237
    (4) *Roehorn v Barry Corporation* [1956] 1 WLR 845
    (5) *Betty's Café Ltd v Phillips Furnishing Stores Ltd* [1959] AC 20
    (6) *Fisher v Taylor's Furnishing Stores* [1956] 2 QB 78
    (7) *S Frances Ltd v Cavendish Hotel (London) Ltd* [2017] L&TR 34 and [2019] AC 249 (an on first appeal)
    (8) *Romulus Trading Company Ltd v Henry Smith's Charity Trustees* [1990] 2 EGLR 75
    (9) *Ivorygrove Ltd v Global Grange Ltd* [2003] EWHC 1409 (Ch)
    (10) *Percy E Cadle and Company Ltd v Jacmarch Properties Ltd* [1957] 1 QB 323
    (11) *Botterill v Bedfordshire County Council* [1985] 1 EGLR 82
    (12) *Livestock Underwriting Agency Ltd v Corbett and Newson Ltd* [1955] 165 EG 469
    (13) *Cadogan v McCarthy and Stone (Developments) Ltd* [1996] EGCS 94

    From all of that material, I summarise the relevant legal principles.

12. Section 30(1)(f) of the 1954 Act provides as a ground for opposition of a new tenancy:

> "That *on the termination of the current tenancy* the *landlord intends* to *demolish or reconstruct the premises* comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding." (emphasis added).

The key matters are to establish the landlord's intention and that the date for doing the work to demolish or reconstruct the premises must be "on termination". The relevant date for assessment of the landlord's intention is the date of the hearing, so in this case 1 December 2022.

13. Ground (f) therefore can relate to the following categories of works:
    (1) Demolition of the whole of the premises comprised in the holding.
    (2) Demolition of a substantial part of the premises comprised in the holding.
    (3) Reconstruction of the whole of the premises comprised in the holding.
    (4) Reconstruction of a substantial part of the premises comprised in the holding.
    (5) Substantial works of construction to the whole of the premises comprised in the holding.
    (6) Substantial works of construction to part of the premises comprised in the holding.

14. The intention of the landlord is both subjective and objective. It is for the landlord to prove the relevant intention. It is not necessary for the court to take a sequential approach to the subjective and objective elements. The elements can be seen as two parts of the same question.

15. The subjective element of the landlord's intention is to establish that he holds a fixed and settled, bona fide desire to do that which he says he intends to do at the relevant date. In Reynolds the subjective element is summarised at paragraph 7-144 as follows:

> "It is not now in doubt that the import of the word 'intend' in section 30(1) (f) of the Act is that at the appropriate date or dates … there must be a firm and settled intention not likely to be changed, or in other words that the proposal for doing the work has moved 'out of the zone of contemplation … into the valley of decision' "

16. Bare assertion of the subjective intention will not suffice. Where the landlord is an individual, his desire is likely to be proved only by his giving evidence. That evidence may be corroborated by steps he has taken towards the implementation of his desire but corroboration is not necessary and the judge is entitled to act on the evidence of the landlord alone. However, if a judge makes a finding that the landlord does not

genuinely intend that which he says, it should be made plain in the judgment that the judge does not believe the landlord and explain why he does not believe him.

17. When assessing firmness of intention, where the landlord has in the past fluctuated in his mind as to what to do with the premises, the court is not bound to accept the landlord's assertion that he now has a firm and settled intention. "Pie in the sky" will not be enough. There may well be a substantial overlap between the subjective and objective elements.

18. The objective aspect of the landlord's intention is that the landlord must have a realistic prospect of being able to bring about the desired results. The landlord has to show that he has a realistic prospect, that is a real chance, of overcoming any hurdles. Intention is not proved if the person professing a desire has too many hurdles to overcome or too little control of events.

19. The two key hurdles in this case are legal ability and practical ability to bring about the desired results. The hurdles are not high. The landlord only has to establish a realistic (as opposed to fanciful) prospect of doing what he desires. He does not have to establish this on the balance of probabilities. For the "legal ability" hurdle, the landlord may have to establish a real prospect of planning permission being granted and that he could satisfy any planning conditions. As for the "practical ability" hurdle, the landlord would have to show a real prospect, for example, that he had or could obtain the necessary finance to achieve his desire if he did not have the funds himself. The proposed work does not have to be financially viable in that it does not have to make financial sense to carry out the work desired.

20. The Claimants assert that without the Defendants providing proof of either the grant of planning permission or, expert evidence to show that there was a realistic prospect of planning permission being granted and that any planning conditions could be satisfied, the landlord will not be able to prove to the requisite standard that they will be able to overcome the practical hurdle. The Claimants' counsel accepted in oral submissions that if a planning application had been made which was well progressed and there was evidence from a planning officer detailing the outcome of a public consultation, the

planning officer site visit and a report which recommended that planning permission be granted, that may well also suffice.

21. The landlords assert that expert evidence is not required. In proving landlords' intention, there is no requirement for corroboration of the landlords' evidence. The landlords therefore asserted that the landlords' lay evidence alone would suffice to establish the requisite intention.

22. The Claimants accept that to establish the landlords' subjective proof of desire, no corroborative evidence is required. However, they continue to assert that in respect of the objective element, the landlords' evidence of desire by itself will not suffice to establish objectively that they have a realistic prospect of overcoming the planning hurdles.

23. The Claimants assert that in this case the landlords must establish the requisite intention both to demolish the existing premises and to reconstruct them as that is the landlords' stated plan in the witness statements and at trial. The landlords assert that it is only necessary to establish an intention to demolish to bring themselves within the section. If they can establish the requisite intention to demolish, it does not matter if they cannot also establish the requisite intention to reconstruct. As the Claimants have not filed or served any evidence, the landlords note that in essence, the Claimants are simply putting the landlords to proof of the relevant intention.

24. To satisfy ground (f), the landlords must also show they intend to start the work at the end of the current tenancy. This does not mean that the landlords have to prove they are ready to start work on the day of termination of the existing lease. Work has to start within a reasonable period of time after the termination of the existing lease. Work starting within three months has been held to be reasonable. In the *S Frances Ltd* case, the period of 12 months was found to be reasonable at first instance. However, that decision was overturned as a result of a lack of reasoning on the part of the trial judge. The High Court judge on appeal observed that the fixing of a reasonable time is "largely impressionistic" and "does not lend itself to much substantiation and reasoning". The judge also noted that in "no other case has a court been so generous to

a landlord as the judge has been in the present case and I would apply the principle that the more unusual or heterodox a finding, the greater the duty must be on the court to explain it". The judge then observed that if various practical difficulties could not be resolved satisfactorily within the period determined to be reasonable, ground (f) would not be established.

25. The *S Frances Ltd* case went on appeal to the Supreme Court. The appeal turned on the nature and quality of the intention required by ground (f) and the fact that the intention in that case was conditional. It did not consider the reasonable time for commencing works on termination of a lease.

The Evidence

26. I do not propose to set out all of the evidence which I read and heard, nor the contents of all of the witness statements. It is not necessary to do so.

Mr Williams

27. I heard first from Mr Williams for the Defendants. In his witness statement, he set out that he and his brother, Mr Justin Williams were the only trustees ("the trustees") of the trust. The beneficiaries of the trust were him and his brother, and their wives Kim and Jayne Williams. On 25 January 2006, the Defendants became the registered proprietors of the freehold of the premises as trustees of the trust. Initially, Mr Williams and Mr Justin Williams personally became tenants of the premises and ran a car dealership company from there.

28. In 2007, the premises were put on the market and there was a provisional agreement to sell the premises to Wimpey homes for £1.6 million. Unfortunately, the global credit crunch of 2008/2009 then hit before the deal was concluded and the sale fell through. Mr Williams said it was always the trustees' belief that substantial redevelopment of the site would achieve the maximum return for the trust's investment. However, during the recession, a decision was taken to let the premises.

29. The landlords let the premises by lease dated 20 September 2011 to the Claimants. At the same time, the trustees entered into a pre-emption agreement with the Claimants so

that if the trustees decided to sell the site during the period of the agreement up to and including 19 September 2021, the trustees had to serve an offer notice specifying the purchase price at which they were prepared to sell the site.

30. Towards the end of 2020, the Claimants began to enquire about discussions for a new lease or the possibility of purchasing the site. By email dated 2 December 2020 at 12:16, Mr Williams said in an email to Mr Thompson:

> "…we are planning to develop the site… That was the plan back in 2008 before the World went pop. We have been approached by a number of developers and have now decided that our best course of action is to apply for the planning ourselves and then sell with the benefit of that planning… we are being told we can expect £2.5 million or thereabouts."

31. Thereafter, Mr Williams said that the trustees' intention changed to demolish the premises and obtain planning permission for redevelopment and to redevelop the premises themselves. The trustees had received unsolicited interest from developers for the premises but Mr Williams said the trustees had not progressed any of them because of their "clear and settled intention to demolish and redevelop".

32. A section 25 notice to terminate the lease was served on the Claimants on or around 3 December 2020. In the notice, reliance was placed on ground (f). Mr Williams said that the intention was to redevelop the premises into an age exclusive apartment scheme to provide retirement living. The trustees had come to this decision because of their knowledge of the demographics of Dore.

33. Mr Williams accepted that there were no board minutes, emails or text messages between himself and his brother about the subject. He asserted that there were only ever telephone calls or discussions when they were together and there was nothing in writing because they spoke every few days and saw each other regularly.

34. An architect, Ms Sikoki, had been appointed in November 2020 to advise, design and apply for planning permission in respect the proposed redevelopment of the premises. Access to the premises was required in order to survey the premises and obtain various reports required for planning permission to be obtained. Apart from one occasion, site access was refused by the Claimants. Mr Williams said that had the obtaining of

reports not been frustrated by the Claimants, the premises would have been demolished by now and redevelopment progressing well.

35. The trustees had obtained a method statement dated 3 April 2021 from Kaydem Demolition Limited ("Kaydem") about how the premises would be demolished. At trial, the trustees produced the tender dated 8 March 2021 from Kaydem showing the total cost of demolition as £44,716.50.

36. A prior approval application had been made to the planning authority to demolish the premises dated 23 April 2021. Due to lack of information in support, the application was rejected on 24 August 2021. The reason given for the refusal was:

> "Insufficient information has been provided in respect of the method of demolition of the site, failing to address or acknowledge the proximity of the River Sheaf and the impacts the works could have on the general health of the water body and its ecology… the proposal will have an unacceptable impact on the water quality and aquatic environment of the River Sheaf".

37. Thereafter, further information was submitted to the planning authority which indicated that it could not provide a decision at that point without consulting with the Environment Agency. The trustees' architect, Ms Sikoki, had indicated to the trustees that in the absence of being able to submit a full planning application, the planning authority would not consider the matter further. The architect had also advised the trustees that they could not obtain permission to demolish without also obtaining planning permission for the redevelopment.

38. In cross-examination, Mr Williams accepted that the initial plan of the trustees was to obtain planning permission for the site and then to sell it. There was no intention by the trustees to develop it themselves. Nor, at that time, was it their intention to demolish the premises themselves.

39. By May 2021, Mr Williams accepted that the plan had changed and the trustees intended to demolish in addition to obtaining planning permission to redevelop. When asked if it was the trustees intention to sell a levelled site, Mr Williams replied "well whether we settled on that I can't recall". He then said that the trustees recognised with

each of the stages, the more they can control, the better the trust would be financially and the better the prospects for the pension fund.

40. Mr Williams then accepted that at the time the Defence was filed in November 2021, the plan remained the same as in May 2021 so that the trustees intended apply for planning permission both to demolish the premises and to build 53 age exclusive apartments. Once planning permission was obtained, the intention was to sell the premises to developers to build in accordance with the planning permission obtained.

41. By the date of Mr Williams' witness statement in July 2022, eight months later, the plan had changed again and the trustees intended to develop and build the apartments themselves and did not intend to sell to third party. Mr Williams accepted that between 2020 and 2021, the trustees' intentions had fluctuated about redevelopment.

42. As to any trustee resolution concerning development of the premises, Mr Williams maintained that there was no record at all in writing, whether by email or text or otherwise about the plans. Mr Williams said that as he worked with his brother, they just spoke to each other.

43. Mr Williams admitted that he did not know what a trustee resolution was. It was explained to him that in order to make a decision about the trust, the trustees need to make a trustee resolution. Mr Williams was asked whether there was any resolution at all. His response was "I guess we think of it as our money".

44. Mr Williams then went on to say that he thought in fact that the wives are also trustees, not just beneficiaries. He agreed there was no resolution by the four of them to spend money on planning, reports, demolition nor on the building of 53 flats. Mr Williams accepted that there was no evidence from the two wives at all. There was also no independent trustee.

45. When re-examined on this point, Mr Williams initially thought he may have confused the word trustee with the word beneficiary. However he then said that as all four parties had to sign a document, he thought all four were trustees. In contrast to his

earlier evidence, Mr Williams then said that decisions were made by the four of them about what to do and then they would give tasks to professionals who did as the trustees asked.

46. Cross-examination continued and Mr Williams accepted the trust deed was not in evidence and that he did not know what the trust deed entitled the trustees to do. The trustees had not received advice from a solicitor as to what their powers were in respect of dealing with the trust and its property and there was no independent trustee to tell them what the powers were. Mr Williams said "we view it as our money to do with as we see fit".

47. Mr Williams confirmed that the reasoning for the trustees wanting to redevelop the premises themselves was that they thought doing that would provide a "good return". When asked if the trustees had undertaken a full financial cost analysis to demonstrate investment return in respect of planning, demolition and rebuilding, Mr Williams said that the planning and demolition costs were known, but not the cost of development as "we may not in fact be using our money".

48. It was then suggested to Mr Williams that a developer would want to know any potential rental return. Mr Williams then said that the trustees' intention was undecided as to whether to rent or to sell the apartments once they were built and he then said "we could end up in a joint venture". He acknowledged that no third party partner was involved as yet and that the trustees had not looked at the cost of borrowing the money to redevelop. He accepted no cost analysis to show any investment return had been done and said there was no firm investment plan at the moment.

49. Mr Williams said the decision to demolish was an "absolute given" and it had yet to be determined whether the trustees would build themselves or go into partnership with the developer. He would not accept that this was a fourth variation of what might be possibly done by the trust in respect of the premises. As far as he was concerned, redevelopment was redevelopment regardless of who carried out the redevelopment and the issue was one of funding. He said he thought the trustees would redevelop but

accepted that the trustees had not yet decided and conceded that if the redevelopment was too expensive for the trust, the trustees may just get somebody else to do it. Mr Williams thought that the trustees could not make a decision until planning permission had been obtained.

50. Mr Williams accepted that he was not an expert on the demographics of Dore and that he lived in Cheshire. He accepted there was no expert evidence on the demographics of Dore nor on the desirability of an age appropriate development scheme there.

51. As to finance, Mr Williams said costing had been produced for demolition in the Kaydem tender and he said the cost for the planning permission was contained in the architect's costs of £25,000. He accepted that did not include the cost of the various reports which needed to be obtained. Mr Williams said that there had been quotes for the various reports but he accepted that there was no evidence as to the cost of those various reports. The architect had been paid £12,500 but Mr Williams did not know whether the trust or somebody else had paid that sum.

52. Mr Williams accepted that the only evidence as to the trust's finances was a single portfolio valuation as at 8 September 2022 showing total assets of just over £3.1 million. That valuation showed there was no cash held by the trust and indeed there was a cash deficit of £774. Although all of the assets were investments, Williams asserted that they were "all liquid assets which could be cashed in". Mr Williams said he assumed there was a trust bank account into which the rent was paid by the Claimants but he did not get involved with any of that.

Mr Justin Williams

53. In his witness statement, Mr Justin Williams also asserted that he and Mr Williams were the only trustees of the trust. He confirmed that he had read Mr Williams' statement and confirmed the accuracy of it.

54. In addition, Mr Justin Williams stated that in around early October 2020, he had contacted the architect Ms Sikoki after he and Mr Williams had agreed to demolish

and redevelop the premises. She was instructed to advise and design a residential development.

Ms Taffy Sikoki

55. In her witness statement, Ms Sikoki said she was contacted by Mr Justin Williams to advise on, design and apply for planning permission for a residential over 55 independent living scheme. She produced a feasibility overview and was then instructed to proceed with obtaining all the necessary relevant reports. Her overview together with a timeline were exhibited to her witness statement. She explained during her evidence that the timeline had been updated at various stages during the process and so the dates contained within it did not reflect what had happened.

56. Ms Sikoki explained that she was unable to obtain the reports needed to apply for planning permission because the Claimants refused access to the premises. The various experts arranged were then stood down as they would be unable to complete their reports. A prior approval application for permission to demolish was made but rejected. There was further correspondence with the planning authority and further information was provided by the landlord. A decision could not be given at that point because further approvals were required internally.

57. In addition, Ms Sikoki said she had spoken on the telephone with Rachel Carrington at the planning authority who said that with the further information provided, the landlord would be granted permission to demolish but that the information needed to be sent to the Environment Agency for approval. Because the turnaround times at the Environment Agency were quite long, too much time would have elapsed between the initial preapproval application and any approval by the Environment Agency. Ms Sikoki said that Rachel Carrington had told her that the landlord should wait and put in a full application rather than a further prior-approval application.

58. Ms Sikoki said that because the Claimants would not give access to the premises, a further planning application could not be submitted because site access for reports would be required and some of the reports would inform the design outcome.

59. Ms Sikoki said in her witness statement "…as we had submitted pre-application approval for 55 flats and we received positive feedback and the planner just wanted to reduce the number of flats flooding risk report and some minor detail which we would then pick up and deal with as part of our actual planning application".

60. Insofar as the evidence of Ms Sikoki was expert evidence, rather than evidence of fact, those aspects of her evidence were objected to on the basis that there was no permission for expert evidence in this case. I excluded any aspect of the evidence of Ms Sikoki which was evidence of an expert nature.

61. In cross-examination, Ms Sikoki said that 10 reports were required in order to make an application for planning permission. Of the 10 needed, after the surveyor was able to access the site on the one occasion access was permitted, a site investigation report which contained the drainage strategy had been obtained. It had not been produced in evidence. In addition, the flood risk assessment had been produced in August 2021 after information was obtained from Yorkshire Water. However, further input was required from the Environment Agency.

62. The three reports which required access to the site were the arboricultural survey, the ecology survey and the noise survey. Those reports had not been obtained and as a result, the other four remaining reports could not be produced because they related to design progression and were dependent upon the three reports the production of which required access to the site. Ms Sikoki said she had assumed that she would be able to get access to the site and continue with the planning application until she was told she could not.

63. After the application for prior approval to demolish was refused, Ms Sikoki provided further information to the planning authority concerning the proximity of the demolition to the river. The response of the planning authority to that information was that advice was required from the Environment Agency. Ms Sikoki agreed that any permission would be subject to the view of the Environment Agency.

64. Ms Sikoki was challenged about her assertion in her witness statement that the application for permission to demolish would be approved, but that information needed to be sent to the Environment Agency before approval could be given. Ms Sikoki then explained that she had spoken to Rachel Carrington by telephone about a week before the permission was refused by letter. Rachel Carrington had said that permission would be granted but she first needed to consult with her line manager. Her line manager raised the issue with the river and so Rachel Carrington then said that it would be refused because it could not be dealt with within the necessary time.

65. Ms Sikoki was taken to the letter of refusal which made no mention of the reason for refusal being a lack of time. She was questioned again about the assertion that permission would be given. Eventually, Ms Sikoki accepted that on the correspondence, any view expressed by Rachel Carrington was subject to the views of the Environment Agency. However, she maintained that comprehensive information had been provided and the planning authority were happy and they dealt with the Environment Agency all the time so they would not say that the information was sufficient if it was not sufficient.

66. When she was taken to the email from the planning authority itself to show that the email did not assert that the information provided was "sufficient", Ms Sikoki said she was relying on her "expert knowledge".

67. Ms Sikoki accepted that there was no existing application for prior approval to demolish. She accepted that there was no full planning application to demolish and reconstruct. She asserted that a number of professionals had been approached for reports although there was no evidence of that presented to the court. She accepted that she had not been told by those professionals how long it would in fact take them to produce their reports.

68. Ms Sikoki accepted that she was expressing an expert opinion when she said she did not envisage difficulties with planning permission being granted. She maintained that positive feedback had been received from the planning authority in response to the pre-application. She accepted that a number of suggestions had been made by the planning

authority to deal with a number of problems identified by the pre-application. Those problems included issues with flooding, potential problems with the design with a reduction from 4 storeys to 3 storeys for most of the building, the fact that a proportion of land had not been reserved adjacent to the river to enable the riverside walk to be extended in the future, and concern about the extent of car parking. She accepted that if those problems were not addressed, planning permission would not be granted. However, she asserted that this was part of a progression whereby the planning authority would give guidance as to what needed to be changed and the design would then be changed to deal with any difficulties identified.

69. Ms Sikoki said that no further design had been worked on because of the need to gain access to the site to obtain the reports in respect of the development. She accepted that at present, the landlords did not have all of the reports and information necessary to satisfy the planning authority that planning permission would be granted based upon the problems and issues raised in the email from the planning authority dated 29 April 2022.

Assessment of the witnesses

70. I accept that Mr Williams was doing his best to tell me the truth as he remembered it on behalf of the trustees. However, he was not accurate in all aspects of his evidence.

71. In his oral evidence, he directly contradicted some of what he had said in his written evidence. Unfortunately for the landlords, in my judgment some of the evidence about which he was contradictory is fundamentally important in this claim. For example, in their written evidence, both Mr Williams and Mr Justin Williams said that they were the only two trustees of the trust. In his oral evidence, Mr Williams, after some hesitation and consideration, stated that in fact there were four trustees of the trust and all of the beneficiaries were trustees. As the trust deed itself has not been produced in evidence, I have no means of deciding accurately whether there are two trustees or four trustees. Perhaps more importantly, I also have no evidence at all as to the nature and extent of powers given to the trustees in the deed of trust and what, if any, restrictions are placed on the trustees in respect of how they deal with trust property.

72. There were also occasions during the cross-examination of Mr Williams where he readily accepted that there were matters concerning the trust and its administration about which he could not really remember or he simply did not know.

73. As to Ms Sikoki, I found her to have some difficulty in separating out what was evidence of fact about which she could give evidence and what constituted expert evidence which was not permitted. In addition, whilst I did not find her to be actively trying to mislead me, I found her to be reluctant to accept that she had painted a somewhat rosy picture of the reality in her witness statement when she baldly asserted that Rachel Carrington had told her that planning permission to demolish would be granted. She was taken carefully through the various items of correspondence between the planning authority and herself. Whilst she accepted what was written in the correspondence, she continued to maintain that it was all part of the process. The clear impression I formed was that she did not accept that she had been in any way misleading by stating that permission to demolish would be granted without setting out the various problems which needed to be addressed as identified by the initial feedback from the planning authority.

Findings

74. As was observed in the landlords' skeleton and in oral submissions made by Mr Adams, this is a case where the landlords are put to proof of their intentions and whether they can satisfy the court that it can bring itself within section 30(1)(f) of the 1954 Act.

75. I remind myself as to the various dicta and guidance concerning the law as set out above.

76. I do not accept the submission made by Mr Adams that, on the facts of this case, I am entitled to find the requisite intention proven in respect of ground (f) in respect of an intention to demolish only. Whilst plainly an intention to demolish only could be used to establish ground (f) in an appropriate case, the clear evidence in this case from Mr Williams was that there was an intention to reconstruct as well as to demolish. The relevant intention is not to demolish only in this case.

77. I accept the evidence of Mr Williams when he said that the intention to demolish was an "absolute given". I accept that the landlords have a subjective desire to demolish. However, I also accept Mr Williams evidence when he said in his witness statement that the trustees' architects had told them "that we cannot obtain permission to demolish without planning permission for the redevelopment". Objectively therefore, on the evidence, the option to demolish only is not one which is available to the landlords even if that were their intention, which it is not.

78. As to an intention to demolish and redevelop, again I accept the evidence of Mr Williams when he expressed the landlords' subjective desire to redevelop the premises in some way in order to maximise the monies available in the trust. However, on the evidence of Mr Williams himself, I cannot find that there is a firm and settled subjective desire for redevelopment. I do not find that the proposal for doing the work has moved out of the zone of contemplation and into the valley of decision. The trustees have not decided how to achieve redevelopment.

79. Their plans have changed:
    (1) From an initial intention in December 2020 just to obtain planning permission to demolish and rebuild the premises,
    (2) to the time the Defence was filed in November 2021 that they would seek planning permission both to demolish the premises and build an age exclusive apartment block and then sell to a developer,
    (3) to the witness statement of Mr Williams in July 2022 where the landlords' intention was to seek planning permission both to demolish the premises and then build the development themselves,
    (4) to the oral evidence given on 1 December 2022 that it was possible that the trustees would enter into a joint venture for the construction of the development.

80. In all those circumstances, I cannot find that the landlords have established a firm and settled subjective intention to demolish and redevelop. I accept the submission made on behalf of the landlords that it is not necessary for the landlord to establish all the details for any redevelopment in order to establish the requisite intention. However,

given the evidence of wavering intention as to what to do with the premises and taking into account all of the matters set out above, I do not find that the landlords have established a firm and settled desire to demolish and redevelop.

81. Even if I am wrong on the subjective intention of the trustees, I cannot in any event find on any objective basis that the landlords have established that there is a realistic prospect of bringing about the desired result. The plans are at a very early stage. There is no planning permission. There is no live application for planning permission. Seven out of the 10 reports which would be necessary to apply for planning permission have not yet been obtained. Whilst I accept the reason for not obtaining those reports is that the Claimants refused access to the premises, they were entitled to refuse. In my judgment, it is completely irrelevant that the landlords' planning application may have been further progressed had the Claimants granted the access sought by the landlords.

82. Even considering the prospects of planning permission being granted to demolish alone based on the pre-application which has been made in respect of this project, the planning authority raised issues about the proximity of demolition to the river and would not make a decision without input from the Environment Agency. There is no evidence of any input as yet from the Environment Agency.

83. A further pre-application was made in respect of redevelopment, a copy of which pre-application has not been disclosed. In response to that pre-application, the planning authority raised numerous problems which need to be dealt with satisfactorily before planning permission would be granted. I have no evidence to suggest that there is a realistic possibility that the various problems raised by the planning authority would be dealt with to their satisfaction and to the satisfaction of the Environment Agency.

84. I have no expert evidence to assist the landlords in establishing that the grant of full planning permission would be likely. Whilst I have the evidence of Ms Sikoki, she can only give factual evidence. The attempt in her witness statement to give expert evidence as to the likelihood of planning permission being granted must be ignored. As a matter of fact, she could not give any evidence to say how long it would take to obtain the necessary reports. She did not give any evidence as to whether those

professionals previously instructed to prepare reports remained available to report now.

85. I accept that if a particular project had either managed to get planning permission or there was evidence from the planning department that planning permission was likely to be given, that evidence may suffice to establish a realistic prospect that the legal hurdles could be overcome without expert evidence. This is not that case.

86. I do not accept the submission made by Mr Adams that the landlords' evidence by itself will suffice in the absence of expert evidence because no particular impediment has been identified by the Claimants which would cause a difficulty for planning. In my judgment, that somewhat puts the cart before the horse. It is for the landlords to establish a realistic prospect that the requisite planning consent would be given. Specific factors were identified in the correspondence from the planning authority which included flooding risk, the need for the landlord to overcome the sequential test because the premises are within flood zone 2 and 3, the necessity for a redesign and other matters which would need to be addressed. I have no evidence as to the likelihood of the landlords successfully resolving the issues raised.

87. Even if I take the email from the planning authority at its highest and in the light of the submission by Mr Adams that there is no evidence that the various issues raised in the email are unsurmountable, there is no evidence from the landlord that there is a possibility that the various problems identified may be surmountable. In those circumstances, where plans are at such an early stage, in the absence of expert evidence, I cannot find that objectively, there is a realistic prospect of planning permission being granted.

88. As to financing any project for which planning permission which may be obtained, although the landlords belatedly filed evidence showing the portfolio valuation of the trust at over £3 million, there is no cash available to the trustees. I accept Mr Williams' evidence that he and his brother have consistently treated the trust fund as being their own money personally and that they have on occasions withdrawn cash from the trust

without challenge. I also accept for the purposes of this preliminary issue that all of the investments could be liquidated at short notice.

89. The difficulty is that I have no evidence whatsoever about the likely cost of redevelopment. Even assuming that the whole £3 million was available, the trustees agreed that spending the money on the redevelopment was an appropriate use of the trust monies and the trustees in fact had the power to simply direct that the trust monies were spent for that purpose, there is no evidence about the final costs involved in redevelopment. There was no evidence as to where the money had come from to pay sums already incurred and paid, for example the £12,500 paid to Ms Sikoki. There was no evidence that the money came from the trust.

90. The evidence from Mr Williams was that decisions had been taken in the hope of maximising sums available in the trust for the beneficiaries. Despite this, there is no analysis of the likely costs and any likely return on the redevelopment. There is no evidence about the demand for properties of this kind in the Dore area nor as to the sale and rental value of the redevelopment.

91. There is no evidence about the ability of the trustees otherwise to finance the project. There is no evidence that any funds could be borrowed. Whilst the possibility of a joint venture was floated in evidence during the course of the trial, there is no evidence of who might be approached to join in the joint venture nor the prospects of joint venture being agreed.

92. Even assuming I am wrong in my findings about both subjective and objective intention of the landlords, I am in any event not satisfied that the landlords have established that the work has a realistic prospect of being started on termination of the lease. I have no admissible evidence about the length of time it may take in fact to obtain the outstanding reports. I have no admissible evidence as to how long the planning process is likely to take. I have no evidence as to the availability of Kaydem to start demolition works if planning permission is granted. There is no evidence of a builder being available to reconstruct after demolition. In my judgment, there are simply too many unknowns for me to find that the landlords have established that there

is a realistic prospect of commencing the works within a reasonable time after the termination of the current tenancy.

Conclusion

93. For all of the above reasons, I find on the preliminary issue that the landlords have not satisfied the requirements of section 30(1)(f) of the 1954 Act so as to be able to terminate the Claimants' tenancy.

94. I am grateful to counsel for their very able assistance in this matter.