

IN THE COUNTY COURT AT NEWCASTLE UPON TYNE

Case No. K01NE605

Courtroom No. 107

Barras Bridge
Newcastle Upon Tyne
NE1 8QF

Thursday, 6th February 2025

Before:
MR RECORDER GOLDBERG KC

B E T W E E N:

LEISURESPACE LIMITED

and

CRT PROPERTY INVESTMENTS LIMITED

MR C FAIN (instructed by Muckle LLP) appeared on behalf of the Claimant Company
MR G HEALEY (instructed by Ward Hadaway LLP) appeared on behalf of the Defendant
Company

JUDGMENT
(Approved)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

RECORDER GOLDBERG KC:

1. This is my judgment following the trial of an unopposed lease renewal claim. The claimant is Leisurespace Limited. The defendant is CRT Property Investments Limited. The premises under consideration are Unit 1, Hall Dene Way, Seaham Grange Industrial Estate in County Durham, from which the claimant operates an indoor children's play centre, trading under the name "Fun Shack". The claimant currently occupies the premises pursuant to a reversionary lease dated 19 April 2013 for a term of 10 years commencing on 29 September 2013. The lease continues after the end of the contractual term pursuant to the provisions of Part II of the Landlord and Tenant Act 1954. The defendant served a section 25 notice on 5 June 2023, specifying 11 December 2023 as the date for termination of the tenancy and did not object to the grant of a new tenancy.
2. Although there were initially several aspects of the new lease which were disputed, by the commencement of the trial the only matters which required determination by the Court were the rent payable under the new lease and the interim rent. As to the latter, the parties are agreed that the interim rent should be paid at the same rate as the rent under the new lease and that such interim rent should be paid from 6 December 2023. In substance, therefore, the only issue upon which the parties are not agreed is the rent under the new lease.
3. Consistent with that position and the fact that both parties are represented by experienced and highly competent legal teams, the trial proceeded efficiently and in good humour. Although each party had served factual witness evidence, none of the factual witnesses were called to give oral evidence. I heard oral evidence from each of the expert valuers, Mr Philip Steadman for the claimant and Mr David Nicholson for the defendant, each of whom were cross-examined. I also have the benefit of a joint report. I am grateful to Mr Fain for the claimant and Mr Healey for the defendant for the economical and measured way in which they put their questions. Both parties can be assured that all relevant matters were explored to the degree necessary. I am also grateful to the solicitor teams for a well-prepared bundle and the sensible approach taken in the lead up to trial which led to the only substantive issue for me to determine, being the rent.

The Premises

4. The premises are located on the Seaham Grange Industrial Estate, which is around two miles to the northwest of Seaham town centre. The estate was developed in the late 1990s as part of the East Durham Enterprise Zone. The premises are at the southern end of Hall Dene Way which is the main estate road. The estate comprises a mix of smaller, medium-sized and larger industrial units. The premises themselves consist of a larger detached warehouse unit which was constructed in the late 1990s. It has the benefit of demised parking adjacent to the northern elevation and a demised yard adjacent to the eastern elevation. The gross internal area is now agreed as being 18,430 square feet which includes both ground-floor and first-floor accommodation. The initial rent under the existing lease was £57,250 per annum and, following a rent review in 2018, the rent was increased to £60,500 per annum.

The Legal Principles

5. The rent is to be determined in accordance with section 34 of the 1954 Act which provides:

- (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.
 - (2A) If this Part of this Act applies by virtue of section 23(1A) of this Act, the reference in subsection (1)(d) above to the tenant shall be construed as including:
 - (a) a company in which the tenant has a controlling interest, or
 - (b) where the tenant is a company, a person with a controlling interest in the company.
 - (3) Where the rent is determined by the Court, the Court may, if it thinks fit, further determine that the terms of the tenancy shall include such provision for varying the rent as may be specified in the determination.
 - (4) It is hereby declared that the matters which are to be taken into account by the Court in determining the rent include any effect on rent of the operation of the provisions of the Landlord and Tenant (Covenants) Act 1995".
6. Counsel are agreed that the rent payable is a matter of valuation. As in many cases, both parties to the expert valuation evidence they call, invite me to assess the rent payable primarily by reference to comparables. This valuation process was explained by Lewison LJ in *Marklands Limited v Virgin Retail Limited* [2003] EWHC 3428 (Ch) at paragraph nine:
- “Valuation essentially proceeds by analogy. The valuer looks for an analogue which is as close as possible to that which he has to value, and which has been the subject matter of a real transaction. He then works on the premise that if the subject matter of his valuation were to be the subject of a similar transaction, it

would command the same value as the analogue. Since the analogue will never be identical to the subject matter of the valuation, the valuer will have to make adjustments to the value revealed by the analogue in order to reflect the differences between the analogue and the subject matter of his own valuation. In the case of a property valuation, the analogues are usually called 'comparables'. In the case of a property valuation, typical adjustments will reflect differences between the comparables in location, terms of letting and so on. One obvious difference between different properties is that they will be of different sizes. As a first step towards eliminating the differences in size between a comparable and the subject matter of the valuation, the valuer will not take the rent of the comparable and apply it to the subject property. Rather, he will divide the rent of the comparable by the area of the comparable to produce a rate per square foot. The area can be calculated in a variety of different ways, depending on the nature of the property. The RICS publish a Code of Measuring Practice to guide practitioners, and it is that Code that the lease refers to. This process of division is called 'devaluation'. Having devalued the comparable, the valuer can then apply the rate per square foot to the subject property (if necessary, making adjustments for the factors I have mentioned). He will then multiply the rate per square foot by the area of the subject property and thus arrive at a rental value. Sometimes, however, the valuer will think it appropriate to make a further adjustment for size, over and above the process of devaluation. This is because the subject property may be considerably larger than the comparable (in which case an end allowance or discount for size may be appropriate); or because a particular comparable may be so small as to produce an extremely high rent if looked at as a rate per square foot (often known as 'kiosk rents'). This is essentially the 'overall' method of valuation".

7. There is a generally accepted hierarchy of rental evidence which is intended to differentiate between the reliability of different types of agreements or determinations as to rent, depending on the circumstances. At the top of that hierarchy is an open market letting. Second is a rent agreed by valuers in an arm's length negotiation. I am reminded by both counsel, however, that the hierarchy is a guide and not a straightjacket. The valuation date is the date of the new tenancy which will be three months and 21 days from the date of the order I make which I intend will be today.

The Experts

General Impressions

8. Neither party took issue with the expertise of the other party's expert. Mr Nicholson for the defendant conceded that he had no practical experience of agreeing lease renewals, rent reviews or open market lettings on the estate. Mr Steadman had some experience, although it related to one particular instruction he told me he took over partway through. Although this was, perhaps, not obvious from their written reports, both expert adopted a similar approach of taking comparable rents, devaluing them to arrive at a rent per square foot and then adjusting that figure for various factors to reflect what they considered the differences between the comparable and the subject premises in order to reach their figure for rent in the new tenancy.

9. An important difference in their approaches was that having reached that figure, Mr Steadman made a further reduction to reflect two rent-free periods of three months; one to reflect the fact he would expect any hypothetical open market letting to include a rent free period of three months and one to reflect the time and cost to the hypothetical tenant of making an application for planning permission. I will return to these points later in my judgment.
10. It is fair to say that Mr Nicholson was much clearer in his report than Mr Steadman in showing his working, by which I mean that the adjustments made by Mr Nicholson were set out clearly and in express terms in his written report whereas the adjustments made by Mr Steadman only really emerged in cross-examination. Many of Mr Nicholson's comparables involved several adjustments being made. Mr Nicholson was cross-examined on this and made appropriate concessions both as to the principle - that is that the more adjustments are made, the less reliable the comparable - and also, in relation to specific examples that some of his comparables were weaker than others. Overall, my impression of the experts was that Mr Nicholson was more willing to make concessions against his client's interests than was Mr Steadman. I found Mr Steadman to be a little evasive in some of his answers and unwilling to make concessions where it appeared to me that concessions ought to have been made.

Adjustment For Time

11. It was common ground between the experts that the rental market locally and on the estate, in particular, had been growing since 2020 and that evidence of rentals agreed or determined prior or during that period ought, therefore, to be adjusted for time. Mr Nicholson used a figure of 6% per annum in his report for this adjustment which he considered was a conservative estimate, having regard to the evidence he had gathered and produced in his report. Part of that evidence were figures provided to him by Northern Trust, a landlord with 13 smaller properties rented on the estate. These figures showed an increase in the average rent per square foot of those 13 properties from £4.66 in March 2019 to £5.71 in September 2024. That is an increase of around 4% per annum over that 5.5-year period. However, between March 2021 and September 2024, the increase was more significant, at 5.55% per annum.
12. Mr Nicholson also used reports issued by national agencies which appear at Appendix F and Appendix G to his report to support his adjustment for growth in the rental market. However, under cross-examination, he accepted that these surveys were not specific to that locality or the estate and, therefore, were of less relevance. Mr Steadman's figure for an adjustment for time was not immediately apparent from his report. However, in cross-examination, he suggested a figure of 8% over a period of around three years, so a little over 2.5% per annum. I understood this figure to be based on Mr Steadman's professional judgment rather than any specific evidence he was able to point to.
13. There is some direct evidence before the Court of rental growth on the estate. Unit 13(a) and (b) was occupied under a three-year lease from June 2021 at a rent of £32,000 per annum with a tenant granted half rent for six months. The experts were agreed that that produces an effective or net rent (that is a figure reflecting the values of the rent-free period) of £4.20 per square foot. That lease was renewed from 1 June 2024 on a stepped basis from a rent of £34,000 per annum in year one to £40,800 per annum in year five. Mr Steadman accepted in cross-examination that the £40,800 figure reflected the landlord's aspiration which the tenant would meet only by virtue of a stepped rent. The net rent over the term, treating the

stepped rent as a total of five months rent-free over the tenancy, was £5.36 per square foot. That is an increase of 9.2% per annum over the period June 2021 to June 2024. Taking all of that evidence together and noting the limitations in respect of each individually, in my judgment, the appropriate adjustment for time in respect of the comparables is 5% per annum from March 2020 onwards.

The Comparables

14. Both experts agreed that size and location of premises are key aspects when considering comparables. One of the issues faced by the experts in this case was the lack of evidence of letting, (by which phrase for these purposes, I include open market lettings, rent reviews and lease renewals) of premises which are of a similar size and in a similar location to the subject premises. The difficulty, putting it simply, is that the estate is relatively small and the majority of premises on the estate are significantly smaller than the subject premises. This issue led Mr Nicholson to identify comparables which were off the estate and up to three miles away; an approach criticised by Mr Steadman. It also led Mr Steadman to consider lettings of units which were, in some cases, around 25% of the gross internal area of the subject premises; an approach criticised by Mr Nicholson. I consider there is force in both sets of criticism. Whilst it is obviously possible to make adjustments to reflect the different location and size of comparable premises, it was common ground between the experts as I understood it, that these adjustments rendered the comparable less analogous and involved an element of subjective opinion on the part of the valuation expert as to the *quantum* of the adjustment.
15. There is one comparable premises identified by both experts which is obviously closer to the subject premises in size and location than any of the other comparables and that is Unit 2, Hall Dene Road. Unit 2 has been measured by Mr Nicholson at 19,832 square foot, gross internal area. It is immediately adjacent to the subject premises. It is, as far as I understand it, similar in age, type and specification to the subject premises. The tenant of those premises renewed its lease in March 2021 at £100,000 per annum with six months at half rent. It is apparent from the evidence in the bundle that at the time of the renewal, it was considered that the gross internal area was 20,560 square feet. If one uses the actual measurement taken by Mr Nicholson, the effective rent per square foot (that is the rent taking the rent-free period into account) is £4.79 and if one uses the measurement of 20,560 square feet, the effective rent per square foot is £4.62.
16. Neither expert suggests that any adjustment is required to the rent figure for Unit 2 to reflect location or size. Both agree that there is an adjustment required for time. Using the 5% adjustment I have previously explained and taking a valuation date for the subject premises of March 2025, being roughly halfway between now and the valuation date and reflecting the fact that there is no certainty that the market will continue to rise after today or at least at the same rate as it has since March 2020, that suggests for Unit 2, a 20% adjustment, producing an effective rent per square foot of £5.75 based on the actual gross internal area or £5.54 based on the gross internal areas which appears in the evidence.
17. Mr Nicholson pins his colours firmly to the mast of Unit 2. He fairly accepted, under cross examination, that his approach was to use the other comparables to sense-check the valuation which was produced by that comparable. Mr Steadman says that Unit 2 is not a useful comparable. At first blush, that seems a difficult position to maintain, in my judgment, given the similarities between the premises. However, Mr Steadman points to the fact that the tenant

was unrepresented and says this means that within the hierarchy of evidence, the lease renewal of Unit 2 sits well below evidence of rents negotiated at arm's length by valuers.

18. There are several difficulties with Mr Steadman's position, in my judgment. First, it is not immediately obvious to me why an unrepresented tenant would be more likely to pay a higher rent than the open market rent. I quite accept that the knowledge of the local market is useful when negotiating, but Mr Steadman's position assumes that the tenant of Unit 2 lacked such knowledge when negotiating the rent. There is simply no evidence to that effect. Second, it emerged in cross-examination, that the tenant of Unit 2 is, in fact, a very well-resourced company with several property interests. The defendant is a professional landlord.
19. The idea floated by Mr Steadman in answer to Mr Healey's questions, that the landlord and tenant may just have arrived at the figure of £100,000 per annum without regard to local conditions and the open market rental value, seems to me, with respect, unreal. As Mr Fain frankly accepted in argument, the claimant's case must be that these two experienced commercial entities simply got it wrong with regard to the open market rent when agreeing the rent on the renewal. I regard that proposition as inherently unlikely.
20. Third, Mr Nicholson's evidence was that an unrepresented tenant may pay more than market rent or they may pay less. I take that evidence into account and I am bound to say it seems right to me. In any negotiation, much is likely to depend on the respective desire of the landlord and tenant to obtain either a different tenant or different premises, and those desires may well change on a case-by-case basis based on each of their particular circumstances. Fourth, and related to the first point, if the tenant in this case wished to put a positive case that the rent upon renewal of Unit 2 was reached without regard to local conditions, it was incumbent upon it, in my judgment, to call factual evidence to support that case and it has not done so.
21. Save for pointing to the rent for Unit 2 being out of kilter with his preferred comparables, the lack of tenant representation on renewal was the only substantive matter which Mr Steadman could point to as to why Unit 2 was not an appropriate comparable. Subject to that out of kilter point, I have rejected Mr Steadman's reasons for excluding or placing limited reliance on Unit 2 as a comparable. In my view, subject to the out-of-kilter point, Mr Nicholson was correct to say that Unit 2 is the best comparable and by some distance.

Out Of Kilter

22. Mr Steadman relied upon rents agreed in respect of some smaller properties on the estate to demonstrate that the Unit 2 renewal rent was an outlier. I have already discussed Unit 13(a) and (b). I pause to observe here that the tenant was also unrepresented in both the 2021 and 2024 rent negotiations for that premises. The effective rent agreed in June 2024 was £5.36 per square foot. Using a 5% per annum adjustment for time, that equates to a rent in March 2025 of £5.56 per square foot. Unit 8 was rent reviewed in July 2022 when an effective rent of either £4.75 or £5.00 was agreed. Adjusting for time on the basis I have indicated gives effective rents of £5.38 or £5.66 per square foot.
23. Unit 6(b) was an open market letting of a semi-detached unit of 5,022 square feet. Accordingly, in relation to the hierarchy of evidence, this is clearly important evidence. However, in my judgment, the reliability of this property as a comparator is reduced by the

matters identified by Mr Nicholson under cross-examination: that this is a semi-detached unit and it is somewhere around 27% of the gross internal area of the subject premises. In any event, Unit 6(b) was let in November 2021 at a net rent of £4.87 per square foot and adjusting for time at 5% per annum gives a figure in March of 2025 of £5.70 per square foot. Unit 7 was a rent review in January 2021 of £4.50 per square foot, effective on net rent, and applying the adjustment for time, this produces a rent in March 2025 of £5.40 per square foot.

24. I observe that all of these figures when adjusted for time on the basis that I have explained, coalesce around the £5.50 per square foot mark which is not too far from the Unit 2 comparable figure also adjusted for time. I acknowledge that Mr Steadman would apply a further adjustment of 10% to reflect the fact that these are smaller units. However, I am using them to sense-check what I regard as the obviously best comparable and, on that basis, they are not at all out of kilter with the rent which was agreed on Unit 2 in March 2021.

Further Deductions

25. I now turn to Mr Steadman's further deductions. I can deal with the first relatively quickly. He reduces the rent by 5% to reflect a three-month rent-free period which he says would be agreed as a matter of course on the hypothetical open market letting I am required to consider under section 34. However, all of the comparable rents I have been dealing with have been net or effective rents; that is to say that they have had the effect of the rent-free period stripped out. In those circumstances, I do not consider it appropriate to make a further deduction for a further rent-free period.
26. The second proposed deduction requires a little unpacking. The parties had, during the course of their negotiations, agreed a new user clause in the lease which is wider than the use to which the claimant intends to put the premises to. However, the existing planning permission for the premises permits most but not all of the uses permitted under the lease. It is, therefore, said that the hypothetical tenant would wish to apply for extended planning permission so as to marry up the planning condition with the user clause. That, it is said, would take time and money, and Mr Steadman's suggestion is that a three-month rent-free period should take account of the time and cost of so doing.
27. The evidence as to cost from Mr Nicholson is that the fees would be around £678. I accept there may well be professional fees in addition to that. Both experts said they would expect the planning permission to be granted and relatively quickly, within two to three months. The difficulty I have with Mr Steadman's position is that it assumes that a tenant would wait until it entered into the lease before the application for planning permission was made. That makes little sense to me. If the hypothetical tenant needed the additional planning permission (and I do not expect there are many who would require it given the marginally wider user clause in the lease as compared to the existing planning permission), it seems to me highly unlikely that that hypothetical tenant would commit to a 15-year lease before the application was made and granted.
28. I accept that that may reduce the number of tenants who were interested in these premises. That would, of course, depend on those tenants who would need the additional planning permission. However, neither expert has said that the mismatch between the user clause and the planning permission would cause any substantive reduction in the market for these premises. Even if it did, I have got no evidence as to the effect that that reduction in

demand would have on rental value in any event. Accordingly, for all those reasons, I make no deduction for a further rent-free period in respect of the planning application.

Conclusion

29. Taking all of the evidence into account on the basis that I have endeavoured to explain in this judgment and relying to a very significant extent on Unit 2 as the comparable adjusted for time, I assess the rent payable pursuant to section 34 in respect of the new lease at £5.50 per square foot which, on my calculations on the agreed gross internal areas, produces an annual rent of £101,365. I hope that counsel can agree in those circumstances, the figure for interim rent.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the judge.