Neutral Citation Number: [2020] EWHC 407 (Ch)

Case No:PT-2019-MAN-000118

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
CAPPED COSTS LIST

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

Date: 25th February 2020

Before :

His Honour Judge Halliwell sitting as a Judge of the High Court

- -

Between :

(1) Mohammed Majeed Faiz
(2) Shakeela Faiz
(3) SASSF Limited

Claimants

- and –

Burnley Borough Council

Defendants

Mr Mark Cawson QC and **Mr Philip Byrne** (instructed by **BPS Law LLP**) for the Claimants
Mr David Berkley QC (instructed by **Burnley Council**) for the Defendants

Hearing dates: 4th and 5th February 2020

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APPROVED JUDGMENT

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

HH Judge Halliwell:

(1) Introduction

1. By these proceedings, the Claimants seek declaratory relief in relation to their rights in a café at Towneley Hall ("the Hall"), a historic country house in Lancashire. The café is in a building ("the Old Stables") which once accommodated the Hall stables.

2. The First and Second Claimants - father and daughter (to whom I shall respectively refer as "Mr Faiz" and "Ms Shakeela Faiz") - maintain they are entitled to a lease ("the Lease") of the Old Stables. The Third Claimant ("SASSF") sues as their sub-tenant.

3. The Defendants ("the Council") are the freehold owners of the Hall, the Old Stables and an extensive area of land within the curtilage of the Hall. At all times, they were entitled to the reversionary estate immediately expectant on the termination of the Lease. They contend they have forfeited the Lease on the grounds that, in granting a sub-tenancy to SASSF, Mr Faiz and Ms Shakeela Faiz committed a breach of the covenants of the Lease.

4. The issue before me is whether the Council have successfully forfeited the Lease. This depends, in turn, on whether, the Council had waived their right of forfeiture by the time they sought to exercise it.

5. The issue is at least potentially of significance. The Lease was for a term expiring on 25th February 2020. If the Council's rights of forfeiture have been waived and, on the scheduled date of expiry, SASSF is in occupation for the purposes of a business under a sub-tenancy, SASSF could be entitled to security of tenure under the provisions of *sections 24* to *28* of the *Landlord and Tenant Act 1954* notwithstanding that the parties to the Lease agreed to exclude such provisions under *Section 38A* of the *Act, D'Silva v Lister House Developments Ltd [1971] 1 Ch 17.* This is on the basis that, following the expiry of the Lease, SASSF would remain in occupation under a separate tenancy. It would, of course, be open to the Council to argue that the sub-tenancy was for the same term as the Lease itself and thus took effect as an assignment of the Lease, *Parc Battersea Ltd v Hutchinson [1999] 2 EGLR 33*. However, this would involve issues as to the interpretation and effect of the Lease and the instrument giving rise to the sub-tenancy. Since I did not hear detailed submissions on these matters - indeed I was not referred to the *Parc Battersea* case - I shall not consider this aspect of the case further.

6. The proceedings have been allocated to the *Capped Costs List Pilot Scheme* under *CPR 51.2.*

7. Before me, Mr Mark Cawson QC and Mr Philip Bryne, of counsel, appeared on behalf of the Claimants and Mr David Berkley QC appeared on behalf of the Defendants. They presented their respective cases with skill and discretion.

(2) Factual Sequence

8. The Council have repeatedly demised the Old Stables for use as a café or restaurant. At least in more recent times, they have sought to exclude the relevant provisions of *Part II* of the *1954 Act* so as to retain control of the marketing and tendering process at the termination of each successive lease. They maintain this is of particular importance for them in view of the proximity of the café to the Hall itself and the implications for the management of the Hall and its grounds.

9. In 2003, Mr Faiz and Ms Shakeela Faiz acquired the business from a previous tenant. At the same time, they took an assignment of the existing lease ("the Original Lease"). They maintain that, eventually, they handed over day to day control of the business to Mrs Aquida Faiz ("Mrs Aquida Faiz") but, following the incorporation, on 1st October 2004, of Stables @ Townley Limited (Registration no. 05247856) ("the First Company"), the business was conducted through the First Company. Mrs Aquida Faiz is Mr Faiz's wife and Ms Shakeela Faiz's mother. It appears Mr Faiz was the sole shareholder of the First Company. He was also a director throughout its trading history. Ms Akeela Majeed Faiz ("Ms Akeela Faiz") was company secretary. She was also a director during the period 15th October 2007-1st October 2008. Ms Akeela Faiz is another of the daughters of Mr Faiz and Mrs Aquida Faiz. She is also and has been at all material times a qualified solicitor.

10. On 26th February 2010, the Council re-let the Old Stables to Mr Faiz and Mrs Shakeela Faiz. It was at this point they entered into the Lease. They did so following a process of competitive tendering. The Lease was for a term of 10 years expiring on 25th February 2020. It contained a scheme of restrictions on assignment and sub-letting together with a proviso for re-entry (see below). It was recorded in the Lease that the parties had agreed to exclude the provisions of *Sections 24-28* of the *1954 Act.*

11. The Council had separate regulatory functions under the *Food Hygiene (England) Regulations 2006.* Following a food hygiene inspection in May 2011, they prosecuted the

First Company for offences in relation to the cleanliness of the café on the basis that the First Company was itself responsible for the overall management of the business.

12. On 31st May 2012, the First Company went into liquidation. By that time, another company had been formed, namely Old Stables at Towneley Limited (Registration no. 07743704) ("the Second Company"), in which Mrs Aquida Faiz was the sole shareholder. From 15th April 2012 to 11th April 2013, Mr Raja Shahbaz Majeed Faiz was sole director and, from 11th April 2013, Mrs Aquida Faiz was sole director.

13. Following the liquidation of the First Company, the Council appear to have corresponded with the Second Company in relation to matters of hygiene at the café albeit such correspondence was addressed to "Stables @ Towneley Limited".

14. Consistently with this, the Claimants maintain, in their Particulars of Claim, that "between around April/May 2012 until around 30 September 2017 [the Second Company] occupied the property and operated the business". On their behalf, it is also contended that between 11th June 2012 and 6th September 2017, some sixty payments were made to the Council in respect of the business from funds held in the Second Company's bank account.

15. On 16th October 2017, the Second Company went into liquidation. However, by then, SASSF had been formed. Ms Shakeela Faiz was sole shareholder. She was also a director from 1st August 2017 to 13th September 2019. Mrs Aquida Faiz was appointed as a director on 1st January 2019.

16. The Claimants have disclosed a sublease dated 1st August 2017 ("the 2017 Sublease") between Mr Faiz and Ms Shakeela Faiz, as landlord, and SASSF as tenant. The 2017 Sublease was signed, as a deed, by each of the parties in manuscript. Ms Shakeela Faiz signed it on behalf of herself and SASSF. When signing the deed, the parties did not enter, in manuscript, the date of the deed. There was no need for them to do so. The date of the 2017 Sublease was typed onto the front page.

17. If the 2017 Sublease was signed on 1st August 2017, it was executed on the date on which SASSF was itself incorporated, some 10 weeks before the Second Company went into liquidation. In Paragraph 11 of the Particulars of Claim, it is contended that SASSF operated the business and occupied the Old Stables from "on or around October 2017".

18. On the Claimant's behalf, it is contended that between 11th October 2017 and 11th November 2019, some 15 payments were made to the Council in respect of the business from funds held in SASSF's bank account.

19. In January 2018, the liquidation of the Second Company was brought to the attention of Mr Andrew Ellis Leah ("Mr Leah"), the Council's Property Services Manager. Owing, in part, to their concerns about this, the Council decided not to renew the Lease at the end of the term. Following the Council's decision, there was a meeting at the café to discuss consequential matters, such as the preparation of a terminal schedule of dilapidations and the "handover". On behalf of the Council, it was attended by Mr Leah, Ms Rawsthorne and Mr Simon Goff. Ms Shakeela Faiz, Ms Akeela Faiz and Mrs Aquida Faiz also attended. The family expressed their disappointment about the Council's decision. However the 2017 Sublease was not mentioned.

20. The Claimants instructed Messrs Betesh Middleton Law ("Betesh Middleton") to act as their solicitors. By letter dated 18th October 2019, Betesh Middleton advised the Council in the following terms:

    20.1. "you are…aware that SASSF has, since 1 August 2017, occupied the [Old Stables]";

    20.2. "SASSF has occupied [the Old Stables] pursuant to a lease dated 1 August 2017, a copy of which is attached for reference"; and

    20.3. as a sub-tenant, SASSF was entitled to "a subsisting right to occupy the property upon the expiry of the lease".

21. As indicated, a copy of the 2017 Sublease was enclosed with the letter. In support of the proposition that SASSF would be entitled to security of tenure, Betesh Middleton referred to *D'Silva v Lister House [1971] Ch 17* and *Brimex Ltd v Begum [2009] L&TR 21.*

22. Betesh Middleton's letter dated 18th October 2019 prompted the Council to take action with a view to forfeiting the Lease. By letters dated 30th October 2019, they served notices on Mr Faiz and Ms Shakeela Faiz under *Section 146* of the *Law of Property Act 1925,* relying on the 2017 Sublease as a breach of the prohibition on subletting in clause 4.16.6. The breach was stated to be incapable of remedy.

23. The Council were apparently mindful that, on 26th September 2019, they had invoiced Mr Faiz and Ms Shakeela Faiz for the sum of £2,845.20 in respect of insurance rent for the period ending on 25th February 2020. This amount remained outstanding. On 4th November 2019, the Council thus submitted an invoice for the revised sum of £1,826.87 having apportioned the insurance rent so as to encompass only the period ending on 18th October 2019.

24. On 11th November 2019, the sum of £1,826.87 was transferred to the Council's bank account in satisfaction of the 4th November 2019.

25. At 7.20 am on 22nd November 2019, the Council exercised or purported to exercise their right of forfeiture, by peaceable re-entry, so as to give rise to the dispute in the present proceedings.

26. Mr Faiz and Ms Shakeela Faiz maintain that by demanding and accepting rent after they had become aware that SASSF was in occupation and submitting their invoice for the revised sum of £1,826.87 in respect of insurance rent, the Council had waived their right of re-entry by the time they purported to exercise their right of forfeiture.

(3) The Capped Costs List Pilot

27. It is believed this is the first occasion on which proceedings subject to the *Capped Costs List* Pilot have reached trial. I shall thus make some observations about matters of procedure.

28. The *Capped Costs List Pilot Scheme* is governed by the provisions of *CPR Practice Direction 51W.* The Pilot is scheduled to last for two years having commenced on 14th January 2019 and it applies to the courts identified in *PD51W Para 1.4.* These include the London Circuit Commercial Court and courts now subsumed in the Business and Property Courts in Leeds and Manchester. It is a separate list, not a sub-list. Subject to the matters listed in *Para 1.6(3),* it is available for all cases to a value not exceeding £250,000 where the trial is expected to require no more than two days.

29. In the present case, the Claimants applied promptly for interim injunctive relief following the action taken by the Council to obtain peaceable re-entry. At that stage, it is unlikely the Claimants contemplated issuing proceedings in the Capped Costs List and, in any event, they did not have any realistic opportunity to raise this with the Council before issuing their application. At the hearing, on 22nd November 2019, of the Claimants' initial application, I granted them interim relief and fixed a return date on 3rd December 2019.

30. On the return date, the parties agreed to treat the hearing as the Case Management Conference. In view of the urgency of the case, it was listed for trial on 4th-5th February 2020 on the basis that the interim injunctive relief would continue until trial or earlier order. I canvassed with counsel the *Capped Costs List Pilot Scheme* and, ultimately, the parties together agreed to transfer the case to the Capped Costs List. Consistently with *PD 51W Para 2.28*, the parties agreed to rely only on the documents contained in their bundles of

core documents with no other directions for disclosure. A deadline was provided for the exchange of witness statements but, consistently with *Para 2.33*, there were no directions for expert evidence. Having been allocated to the Capped Costs List, there was no provision for cost budgeting.

31. Although *Para 2.31* provides for the parties to be limited to no more than two witnesses, agreement was reached that the Council should be permitted to call three witnesses. For reasons to which I shall refer later, I was satisfied that this was appropriate and, at the commencement of the trial, I thus made an order providing for the Council to have permission to do so.

32. A trial bundle was filed at Court amounting to 568 pages. Skeleton arguments were delivered in accordance with the Chancery Guide and the parties jointly prepared a Trial Timetable. At all stages, there was a significant degree of collaboration to ensure that the case was ready by the agreed trial date. For this, the parties are to be commended.

33. The trial occupied the Court for no more than two full days.

(4) Witnesses

34. On behalf of the Claimants, two witnesses were called to give evidence, namely Mrs Aquida Faiz and Ms Theresa D'Costa Nathan.

    34.1. Although she was not a signatory to the Lease or the 2017 Sublease, Mrs Aquida Faiz is, of course, closely related, by family, to each of the signatories and the management of the business was effectively handed to her once it became apparent Ms Shakeela Faiz would be unable to manage it herself. Mrs Aquida Faiz was generally involved in the day to day affairs of the business save for a period in 2011 when, she maintains, it was put in the hands of Mr Iftikhar Ali. She was not confrontational or evasive when answering the questions put to her in cross examination but, at times, her evidence was vague and implausible in the context of the evidence as a whole, particularly in relation to matters such as the grant of a sublease in or around 2012. This is a matter to which I shall return later. I have thus exercised caution before accepting Mrs Aquida Faiz's evidence where such evidence is not corroborated by contemporaneous documentary evidence. On such matters, I have assessed the plausibility of her testimony in the light of the overall evidence.

    34.2. Ms D'Costa has worked in the café for upwards of 15 years as a general employee and bookkeeper. She gave evidence that, over the years, she had made each of the

payments due to the Council in respect of rent and other amounts due under the Lease using debit cards issued to the Second Company and SASSF. She confirmed that such payments were made over the telephone by calling the Council's cashier, generally Jackie, identifying the relevant invoice and providing details of the debit card for the account from which payment was to be taken. During the conversation, she would identify the account holder. Ms D'Costa's evidence was confidently given. It is conceivable she has confused Council transactions with some other transactions and, in the light of the evidence of Mr Entwistle (see below), I am not satisfied Ms D'Costa identified the Second Company or, indeed, SASSF as the account holder on the occasion of every payment to the Council. However, I am satisfied that, on several occasions in the past, Ms D'Costa will have provided details of the account holder when arranging payment over the telephone. This will have included occasions on which the Second Company and, later, SASSF was the account holder.

35. As already mentioned, I gave the Council permission to call three witnesses, namely Mr Andrew Ellis Leah, Mrs Jennifer Rawsthorne and Mr Francis Martin Paul Entwistle.

35.1. Mr Leah has been employed as the Council's Property Services Manager since October 2005 although, since January 2016 the day to day management of the Council's property has been outsourced to Liberata UK Limited ("Liberata"). He gave evidence in relation to the grant of the Lease and, more generally, the evolving relationship between the Council, Mr Faiz, Ms Shakeela Faiz and Mrs Aquida Faiz.

35.2. Mrs Rawsthorne has been employed by Liberata and has had responsibility since November 2018 for the Burnley area. Since then she has dealt with issues of property and estate management. She attended the 20th May 2019 Meeting, as indeed did Mr Leah.

35.3. Mr Entwistle is employed by the Council as its Senior Corporate Debt Recovery Officer and, on that basis, dealt with the Council's system for the receipt of bill payments. He referred to the Council's records of two telephone calls from Ms D'Costa, during 2019, in which she did not identify SASSF as the account holder when arranging for payments.

36. In view of the fact that the evidence of Mr Leah and Mrs Rawsthorne was focussed on different periods and Mr Entwistle's evidence - narrowly directed to a discrete aspect of the case - could comfortably be accommodated without extending the trial to more than

two days, I was satisfied it was appropriate to depart from the general rule in the Capped Costs List limiting each party to the oral evidence of no more than two witnesses.

37. Having heard their evidence, I am satisfied that the testimony of Mr Leah, Mrs Rawsthorne and Mr Entwistle was to the best of their recollection and can generally be treated as accurate. For the avoidance of doubt, I am thus satisfied that, on the two 2019 occasions specifically identified by Mr Entwistle, Ms D'Costa did not identify SASSF as the account holder. More likely than not, there were several other occasions on which Ms D'Costa did not identify the account holder. However, I am satisfied Ms D'Costa repeatedly provided details of the account holder when arranging payment over the telephone.

(5) The Lease

38. The Lease was for a term of 10 years commencing on 26th February 2010 and expiring on 25th February 2020. "The Rent", as defined, was payable in advance by equal quarterly payments on the first day of January, April, July and October each year. However, in addition, the tenant was required to pay "the Insurance Rent within 7 days of demand" under Clause 3.2. In Clauses 1.14 and 1.15, a distinction was drawn between "the Rent" and "the Rents". Unlike "the Rent", "the Rents" were defined so as to include "the Insurance Rent".

39. "The Insurance Rent" was defined, in Clause 1.2, so as to mean "the sums which the Landlord from time to time pays by way of premiums for effecting the insurance referred to in clause 5.2 including any increased premium payable by reason of any act or omission of the Tenant". By Clause 5.2, the Council covenanted, as landlord, to insure the demised premises against defined risks.

40. The restrictions on alienation were in the following form.

"4.16 Alienation

4.16.1 Not to part with or share possession or occupation of the whole of the Premises save by way of an assignment charge of mortgage of the whole of the Premises to which the Landlord has given written consent (such consent not to be unreasonably withheld) provided that the Landlord shall be entitled (for the purpose of section 19 (1A) of the Landlord and Tenant Act 1927):

4.16.1.1 to withhold its consent in any of the circumstances set out in clause 4.16.3

4.16.1.2 to impose all or any of the matters set out in clause 4.16.4 as a condition of its consent

4.16.2 The provisos of clause 4.16.1.1 shall operate without prejudice to the right of the Landlord to withhold such consent on any other ground or grounds where such withholding of consent would be reasonable or to impose any further condition or conditions upon the grant of consent where the imposition of such condition or conditions would be reasonable

4.16.3 The circumstances referred to in clause 4.16.1.1 above are as follows:

4.16.3.1 Where the assignee is an associated company of the Tenant unless the associated company can demonstrate to the satisfaction of the Landlord financial standing of equivalent strength to the Tenant

4.16.3.2 Where in the reasonable opinion of the Landlord the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's covenants in the Lease

4.16.3.3 Where in the reasonable opinion of the Landlord the value of the Landlord's interest in the Premises would be diminished or otherwise adversely affected by the proposed assignment on the assumption (whether or not a fact) that the Landlord wished to sell its interest the day following completion of the assignment of this Lease to the proposed assignee

4.16.3.4 Where all sums due from the Tenant under this Lease have not been paid at the date of the licence to assign

4.16.3.5 Where in the Landlord's reasonable opinion there are at the date of the application for the licence to assign material outstanding breaches of a Tenant covenant contained in this Lease

4.16.4 The conditions referred to in clause 4.16.1.2 are as follows:

4.16.4.1 The execution and delivery to the Landlord prior to the assignment in question of a deed of guarantee (being an authorised guarantee agreement within section 16 of the

Landlord and Tenant (Covenants) Act 1995) in the form set out in the Seventh Schedule

4.16.4.2 The payment to the Landlord of all Rents and other sums which have fallen due under the Lease prior to the date of the assignment

4.16.4.3 The assignment shall not take place until any requisite consent of any superior Landlord or mortgagee has been obtained and any lawfully imposed conditions of such consent satisfied

4.16.4.4 The execution and delivery to the Landlord prior to the assignment of a rent deposit deed for such sum as the Landlord may reasonably determine in such form as the Landlord may reasonably require together with the payment by way of cleared funds of the sum specified in the rent deposit deed

4.16.4.5 If so reasonably required by the Landlord the assignee shall upon or before any assignment and before taking occupation obtain guarantors reasonably acceptable to the Landlord

4.16.5 Not to assign charge mortgage part with or share possession or occupation of any part or parts (as distinct from the whole) of the premises or permit any company or person to occupy the same

4.16.6 Not to sublet the whole or any part of the Premises

Within 28 days of any permitted assignment charge or any transmission or other devolution relating to the whole of the Premises to produce for registration with the Landlord's the said deed or document or a certified copy thereof and to pay the landlord reasonable charges for the registration of every such document."

41. The proviso for re-entry in clause 6.1 of the Lease was exercisable *inter alia* in the event that "the Rents", as defined, were in arrear for 21 days or "any covenant or obligation on the Tenant's part or condition contained herein is not performed or observed".

(6) Factual determination

42. I must determine some important issues of fact and, in some instances, mixed issues of fact and law before identifying the material breaches of contract and addressing the legal principles governing the concept of waiver. They include issues as to the identity of the

person or persons who historically conducted the business and occupied the Old Stables and issues as to whether, and if so, when Mr Faiz and Ms Shakeela Faiz granted a sublease or subleases to the Second Company or SASSF. I must then consider the Council's knowledge of such matters, actual or imputed.

43. Mr Faiz and Ms Shakeela Faiz, not Mrs Aquida Faiz, first entered into the assignment of the Original Lease. In all likelihood, they also purchased the business. However, from an early stage, it was a family enterprise and I am satisfied that, at some point between 2003 and 2010, Mrs Aquida Faiz became more involved personally in the management of the business than anyone else. Following the incorporation, in October 2004, of the First Company, the First Company was the vehicle for the business. Mrs Aquida Faiz was not formally appointed as a director. When giving her evidence, she demonstrated a clear understanding of the affairs of the First Company and its legal obligations and, in all likelihood, she acted as a *de facto* director. However, Mr Faiz was formally in office as director and there is nothing to suggest he purported to cede overall responsibility to anyone else.

44. Following the Lease, the First Company remained the vehicle for the business and Mrs Aquida Faiz continued to be more involved personally in the management than anyone else. It is conceivable, as Mrs Aquida Faiz maintains, that for a short period in 2011, the business was put in the hands of Mr Iftikhar Ali but, following the prosecution of the First Company in 2011, she took over overall responsibility for the business.

45. When, in August 2011, the Second Company was formed, Mr Raja Shahbaz Majeed Faiz was formally appointed as director. At some point between August 2011 and May 2012, when the First Company was placed in liquidation, the Second Company took over the business. In all likelihood, Mrs Aquida Faiz, again took on at least some of the responsibilities of a director at that stage and it is notable she was formally appointed sole director from 11th April 2013.

46. It is likely that the liquidation of the Second Company took a similar pattern and, in the period leading up to the voluntary liquidation of the Second Company on 16th October 2017, SASSF somehow acquired the business. However, it is unlikely that SASSF acquired the business on the day it was formed, 1st August 2017. There is a paucity of helpful evidence but, more likely than not, SASSF took over the business and started to trade from the Old Stables in late September or early October 2017. According to the evidence of the

Claimants, rent was paid from the Second Company's bank account until 6th September 2017 and it appears SASSF's rental payments commenced the following month, on 11th October 2017, shortly before the Second Company went into liquidation.

47. Since the relevant business was operated, in succession, through the First Company, the Second Company and SASSF, each such company can be taken to have *occupied* the Old Stables. Until 2012 or thereabouts, they can be taken to have done so as licensees of the tenants, Mr Faiz and Ms Shakeela Faiz. During that period, it is not suggested the tenants ceded *possession* to the companies. However, it is an established principle that, where the demised premises are occupied for the business of a company, the company will generally be treated as occupier, *Pegler v Craven [1962] 2 QB 69.*

48. Mrs Aquida Faiz gave evidence that, in or around 2012, Mr Faiz and Ms Shakeela Faiz granted a sublease to the Second Company. She could not "remember the date or details because it was a long time ago" and "unfortunately, I cannot find a copy of the…sublease". However, her evidence was not qualified or nuanced on the critical issue of whether a sublease was granted to the Second Company, embodied in some form of written instrument. Having carefully considered the evidence as a whole, I have regrettably reached the conclusion that her evidence on this issue is false. Firstly, whilst this sublease was allegedly made a long time ago, in 2012, no supportive contemporaneous documentary evidence, whether by way of correspondence or otherwise, has been adduced. Nor is there a supportive witness statement or other confirmatory document from Mr Faiz, Ms Shakeela Faiz or, indeed, Mr Raja Shahbaz Majeed Faiz who would have been expected to sign the sublease or attend to the formalities of execution. Secondly, whilst Mrs Aquida Faiz referred to the sublease in her witness statement dated 27th January 2020, she did not refer to it in the Particulars of Claim which she verified at the outset on 10th December 2019 notwithstanding that she took the opportunity, at that stage, to assert that the Second Company was in occupation from April/May 2012 until 30th September 2017 and that SASSF itself occupied the Old Stables under a sublease. Thirdly, if the Second Company was entitled to a sub-tenancy, there is no evidence that this was brought to an end, whether by surrender or otherwise before it went into liquidation. However, there is nothing to suggest it was identified as an asset or liability in the Second Company's Statement of Affairs nor, indeed, is there evidence that it was disclosed to the liquidator or that he took action to disclaim it. Fourthly, if the sublease was granted in 2012 and was intended to endure for the unexpired residue of the Lease itself, it would have been for a term of more

than seven years and thus been registrable under the provisions of *Section 27(2)* of the *Land Registration Act 2002*. However, there is nothing to suggest that it was ever registered at the Land Registry or, indeed, that any steps were taken to have it registered. Fifthly, in cross examination, Mrs Aquida Faiz did not provide a convincing explanation as to what might have happened to the sublease – she surmised it might have been lost or damaged as a result of a "leakage" but her evidence on the point was vague - and, on the hypothesis that it might have been brought to the attention of the liquidator, she confirmed she had not asked the liquidator for a copy. I am thus driven to the conclusion that no sublease was granted to the Second Company and, between May 2012 and October 2017, or thereabouts, the Second Company occupied the Old Stables as the licensee of Mr Faiz and Ms Shakeela Faiz, not as their sub-tenant.

49. Next I must consider the overall effect of the 2017 Sublease and ask when the parties can be taken to have entered into it.

50. On its face, the 2017 Sublease itself raises a number of questions. The date on the front page of the 2017 Sublease is "01/08/2017". It was not dated elsewhere. "The Rent Commencement Date" was also "01/08/2017" albeit, in contrast to the Lease, the rents were payable on the usual quarter days, 25th March, 24th June, 29th September and 25th December each year. In view of the fact that the Lease was itself scheduled to come to an end no more than two years six months later, it can reasonably be assumed that the 2017 Sublease did not require registration and was not a prescribed clauses lease within the meaning of the *Land Registration Rules 2003*. It also appears no prescribed clauses were incorporated. Rather confusingly, however, there were several references to such clauses in the document and the contractual term was defined so as to mean "the term mentioned in LR6". If this was intended to refer to the prescribed clauses in the Lease itself, no evidence was admitted to suggest that this might have been so. In the absence of indications in the lease to the contrary, a lease will generally be construed so as to commence on the date of the lease itself if no date for commencement is expressly stated, *Meskin v Hickford (1624) J Bridg 16*. It is conceivable that, when construed in the light of the surrounding circumstances, the Sublease would be construed so as expire at the end of the Lease itself. However, in the absence of argument, I shall not assume that to be the case.

51. Nevertheless, the 2017 Sublease would not have taken effect until it was signed and delivered as a deed. In the present case, the 2017 Sublease appears to have been signed as a deed by each of the required signatories, and witnessed as such, in compliance with the

formalities in *Section 1* of the *Law of Property (Miscellaneous Provisions) Act* 1989 and *Section 44* of the *Companies Act 2006*. By *Section 46(2)* of the *2006 Act*, the document is presumed to have been delivered by SASSF, upon execution, in the absence of evidence to the contrary. Strictly, there is no such presumption where a deed is signed by an individual. However, in the present case, the Council has not taken a point in relation to the formalities of execution. I am thus satisfied that the parties to the 2017 Sublease can be taken to have signed and delivered the document as a deed.

52. More likely than not, the parties entered into the 2017 Sublease in the belief that SASSF might thereby acquire a measure of statutory security of tenure which would not be available to Mr Faiz and Ms Shakeela Faiz, as tenants under the Lease. As a qualified solicitor, Ms Akeela Faiz was no doubt aware that this was a possibility and can reasonably be expected to have advised Mr Faiz and Ms Shakeela Faiz accordingly. She can certainly be taken to have been aware of it by the time of Betesh Middleton's letter dated 18th October 2019. I am satisfied that they were motivated by this consideration when entering into the 2017 Sublease itself since there is no other convincing explanation for them to have done so. In evidence, Mrs Aquida Faiz maintained that the arrangements were made so as to ensure that SASSF would be liable for the rent and other payments under the Lease. However, this does not sustain detailed scrutiny. In entering into the 2017 Sublease, Mr Faiz and Ms Shakeela Faiz did not release themselves from liability under the Lease and could be taken to have been aware of that fact. No doubt, at least in a formal sense, the 2017 Sublease allowed them to obtain the benefit of contractual obligations from SASSF but they had not taken steps to obtain the benefit of such obligations before. In any event, Ms Shakeela Faiz herself was sole shareholder and, until 13th September 2019, she was also a director of SASSF.

53. Nevertheless, it is not submitted that the 2017 Sublease was a sham or that it was otherwise without legal effect. Upon execution, SASSF would have become entitled, for the first time, to a legal estate in possession of the Old Stables. The next question is thus as to when the 2017 Sublease took effect.

54. It is implicit in Betesh Middleton's letter dated 18th October 2019 that the 2017 Sublease was executed on 1st August 2017 and that, having executed the same, SASSF took possession and entered into occupation. In separate paragraphs of the letter, Betesh Middleton asserted that "SASSF has occupied the property pursuant to a lease dated 1st

August 2017" and, elsewhere, that "SASSF has, since 1st August 2017, occupied the property".

55. However, in their letter dated 18th October 2019, Betesh Middleton also stated that SASSF did not commence trading until "on or around 01 October 2017". Similarly, in Paragraph 10 of the Particulars of Claim, it is asserted that the Second Company occupied the property and operated the business until around September 2019. Consistently with this, the Claimants contend, in Paragraph 11, that SASSF has "operated the business and exclusively occupied the property pursuant to the sublease" since on or around 1st October 2017.

56. The signatories to the 2017 Sublease have not filed evidence nor have they made a statement of truth verifying the Particulars of Claim. Whilst Mrs Aquida Faiz has signed the statement of truth herself, she confirmed in her witness statement that she was not herself involved in the process of attending to the Sublease and stated that Ms Shakeela Faiz made the relevant arrangements herself. When referred, in cross examination, to the 2017 Sublease and asked to confirm it was made on 1st August 2017, Mrs Aquida Faiz answered in the affirmative. However, she was unable to provide any convincing explanation as to why it was thus granted at a time the Second Company was itself carrying on the business from the premises. Her evidence on this issue was unconvincing and implausible.

57. In my judgment, it is likely the 2017 Sublease was executed between 20th May 2019 and 18th October 2019 and back-dated to 1st August 2017.

    57.1. In all likelihood, it was executed prior to late September or early October 2017 because it was intended to take effect on execution – or can be taken to have done so - and there could be no reason for the 2017 Sublease to have taken effect whilst the Second Company was itself in occupation carrying on business from the Property. Nor could there have been good reason for the Second Company to have continued to pay the rents at a time that the Old Stables had been sub-let to SASSF.

    57.2. If, as thus appears, the 2017 Sublease was executed after 1st August 2017 and, in all likelihood, no earlier than SASSF entered into occupation, there is a paucity of helpful evidence as to the date on which it was executed. However, if the 2017 Sublease had been executed by the time of the 20th May 2019 meeting, Ms Shakeela Faiz, Mrs Aquida Faiz or Ms Akeela Faiz - at least someone present from the Faiz

family - could have been expected to have mentioned it at the meeting. They did not do so.

57.3. Obviously, the 2017 Sublease had been signed by 18th October 2019, when Betesh Middleton sent a copy to the Council.

58. It is next necessary for me to consider the Council's evolving state of knowledge about the occupation of the Old Stables and SASSF's status as a tenant, particularly from 1st October 2017 or thereabouts when SASSF first occupied the Old Stables. This includes knowledge imputed to the Council through its agents. It is limited to knowledge obtained by officers, servants or agents on behalf of the Council in their capacity as a property owner and does not include knowledge exclusively obtained in support of other statutory functions such as their regulatory functions under the *Food Hygiene Regulations 2006*. Nevertheless, as Mr Cawson QC pointed out in his closing submissions, once information was provided to the Council's Property Services department by other departments of the Council, it would be deemed to form part of the knowledge of the Council in their capacity as landlord.

59. In their capacity as regulatory authority under the *Food Hygiene Regulations*, the Council were plainly aware during 2011-2013 that the business at the Old Stables was successively conducted through the First Company and the Second Company. Indeed, in 2011, they took action to prosecute the First Company on that basis. However, I have seen nothing to indicate the Council became aware of these matters in their capacity as landlord at that stage.

60. Based on the evidence of Ms D'Costa Nathan, I am satisfied that, during 2012 and 2017, she identified successive companies, as the account holders, when making payments to the Council, by telephone, of the amounts due under the Lease. However, in my judgment this would not have sufficed, in itself, to furnish the Council with knowledge that the companies were in occupation.

61. In my judgment, the Council first acquired knowledge that SASSF was in occupation during January 2018. It appears from emails on 3rd January 2018 that, at about that time, Ms D'Costa Nathan (then called Teresa Lam) advised Ms Jayne Enright, the Council's Principal Environmental Health Officer, Food Safety, that there had been a change in the ownership of the business and SASSF had taken over from the Second Company. By email dated 3rd January 2018, Ms Enright responded by sending her a Food Registration Form and forwarded her email to Mr Leah. This prompted Mr Leah to make inquiries about the

Second Company which revealed that it had been placed in liquidation. By an email dated 25th January 2018, a council employee, Mr Evenett, advised Mr Leah and Mr Goff, Head of Greenspaces and Amenity that, whilst "the tenancy [was] with two individuals", the latter had "set up a company to operate the Café". He indicated that "the company…has dissolved and may have outstanding debts". Later, he suggested that "the tenancy is separated from the company running catering at the stable. The tenants take a risk that they will be unable to find a replacement company or set-up a company with sufficient finances, suitable directors and access to credit to operate the café". Whilst Mr Evenett may have believed that the tenants had not yet found "a replacement company or set-up a company…" to operate the business, it should have been apparent to Mr Leah, from Ms Enright's earlier email, that SASSF was now the owner of the business.

62. Having become aware, in January 2018, that the business was being conducted through SASSF, nothing happened subsequently to suggest otherwise. From that time, the Council thus had the knowledge required to infer that SASSF was in occupation of the Old Stables. However, they were not advised Mr Faiz and Ms Shakeela Faiz had done anything to sublet the property and had no reason to believe SASSF was in occupation otherwise than as their licensee until they received the letter dated 18th October 2019 from Betesh Middleton.

(7) Legal Principles

63. A landlord waives its rights of forfeiture when, with full knowledge of the facts upon which its rights have arisen, it acts in a way consistent only with the continuation of the lease.

64. In *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd [1971] AC 850*, Lord Diplock observed, at *883 A-C*, that this type of waiver "…arises in a situation where a person is entitled to alternative rights inconsistent with one another. If he has knowledge of the facts which give rise in law to these alternative rights and acts in a manner which is consistent only with his having chosen to rely on one of them, the law holds him to his choice even though he was unaware that this would be the legal consequence of what he did. He is sometimes said to have "waived" the alternative rights, as for instance a right to forfeit a lease or to rescind a contract of sale for wrongful repudiation or breach of condition; but this is better categorised as "election" rather than as "waiver". It was this type of "waiver" that Parker J was discussing in *Matthews v Smallwood [1910] 1 Ch 777*".

65. In a passage of his judgment in *Matthews v Smallwood (supra) at 786-787* – regarded as a classical statement of the law – Parker J stated as follows.

"Waiver of a right of re-entry can only occur where the lessor, with knowledge of the facts upon which his right to re-enter arises, does some unequivocal act recognizing the continued existence of the lease. It is not enough that he should do the act which recognizes, or appears to recognize, the continued existence of the lease, unless, at the time when the act is done, he has knowledge of the fact under which, or from which, his right of entry arose. Therefore we get the principle that, though an act of waiver operates with regard to all known breaches, it does not operate with regard to breaches which were unknown to the lessor at the time when the act took place. It is also, I think, reasonably clear upon the cases that whether the act, coupled with the knowledge, constitutes a waiver is a question which the law decides, and therefore it is not open to a lessor who has knowledge of the breach to say "I will treat the tenancy as existing, and I will receive the rent, or I will take advantage of my power as landlord to distrain ; but I tell you that all I shall do will be without prejudice to my right to re-enter, which I intend to reserve". That is a position which he is not entitled to take up. If, knowing of the breach, he does distrain, or does receive the rent, then by law he waives the breach, and nothing which he can say by way of protest against the law will avail him anything. Logically, therefore, a person who relies upon waiver ought to shew, first, an act unequivocally recognizing the subsistence of the lease, and secondly knowledge of the circumstances from which the right of re-entry arises at the time when the act is performed".

66. Having endorsed this statement of the law, Aldous LJ confirmed, in *Cornillie v Saha and Bradford & Bingley Building Society (1996) 72 P&CR* 147 at 155-156, that there was an additional requirement, namely that the landlord's act of recognition must be communicated to the tenant.

(8) Analysis

67. In the present case, there are issues about the Council's knowledge, as landlord, and the extent to which they acted in a manner consistent only with the continuation of the Lease.

68. On behalf of the Claimants, Mr Cawson submits that, by January 2018 at the latest, the Council knew that SASSF was in occupation. Relying on *Metropolitan Properties Co Ltd v Cordery (1980) 39 P&CR 10*, he submits they should thus be deemed to have had knowledge of the 2017 Sublease from about this time. Having un-disputably demanded

and accepted rent afterwards, he maintains that the Council have plainly waived their right of entry.

69. In *Metropolitan Properties Co Ltd v Cordery (supra)*, a tenant of a flat covenanted not to assign, underlet, part with or share the possession or occupation of the flat. In breach of covenant, he sublet the flat. His sub-tenant then moved in. Notwithstanding that the landlord's porters became aware the sub-tenant was in occupation, the landlord continued to accept rent from the tenant. When the landlord commenced possession proceedings, the sub-tenant submitted she was entitled to a lawful sub-tenancy and thus entitled to statutory protection under *Section 137(2)* of the *Rent Act 1977* on the basis the landlord had waived the breaches of covenant. Counsel for the landlord submitted that, through the porters, the landlord could not have had sufficiently precise knowledge to give rise to waiver. Whilst it was aware the sub-tenant was in occupation, it did not follow that it knew she had been granted a sub-tenancy. The Court of Appeal rejected this submission on the basis that, once it was deemed to be aware that the tenant was in breach of covenant, it was for the landlord to make inquiries to ascertain the precise nature of the breach. They thus concluded the landlord had waived the breach and the subtenant was thus entitled to a lawful sub-tenancy.

70. It was an important feature of the *Cordery* case that the breaches of covenant arose out of a single transaction under which the tenant sub-let the flat. The breaches of the obligations not to underlet or part with possession or occupation of the flat were each in the nature of a "once and for all" breach. Pursuant to her sub-tenancy, the subtenant took possession and entered into occupation. Notwithstanding that the landlord had imputed knowledge the sub-tenant was in occupation of the flat, it failed to make any inquiries about the basis on which she was in occupation and was thus deemed to have knowledge of the transaction under which her rights of occupation were acquired. With such knowledge, it accepted rent.

71. This is very different from the present case. SASSF acquired the business and entered into occupation of the Old Stables in late September or early October 2017 shortly before the Second Company went into liquidation. It did so as the tenants' licensee. The Council became aware SASSF was in occupation in January 2018. Had they made inquiries about SASSF's rights at that stage, the inquiries would have revealed that SASSF was entitled to no more than a licence.

72. The Claimants did not enter into the 2017 Sublease until later. More likely than not, this was after 20th May 2019, upwards of eighteen months after SASSF first entered into occupation. Between 20th May 2019 and 18th October 2019, the Council continued to accept rent. I accept the evidence of Ms D'Costa Nathan that SASSL made some four payments to the Council during that period, including two rental payments of £4,569.54 on 18th July and 25th September 2019. However, until they received Betesh Middleton's letter dated 18th October 2019, nothing happened to put the Council on notice that there had been any material change in circumstances or, indeed, to suggest that Mr Faiz and Ms Shakeela Faiz had granted a sub-tenancy to SASSF.

73. In my judgment, the Council did not waive their right to forfeit the Lease prior to receipt of Betesh Middleton's letter dated 18th October 2019.

74. However, Mr Cawson advanced an alternative case based on the Council's invoice dated 4th November 2019 for the revised sum of £1,826.87 in respect of insurance rent. On this issue, Mr Cawson's submissions were simple. Since the Council delivered the invoice following Betesh Middleton's letter dated 18th October 2019, they did so with knowledge of the 2017 Sublease. In view of the fact that the invoice amounted to a demand for Insurance Rent under Clause 3.2 of the Lease and thus gave rise to a liability for monies due after the Council obtained knowledge of the 2017 Sublease, Mr Cawson submitted that the Council thereby waived their rights of forfeiture. He submitted that the Council committed a further act of waiver when they accepted payment.

75. In reply, Mr Berkley QC, for the Defendant, submitted that the 4th November 2019 invoice was for monies that became due before 18th October 2019 and thus before the Council had knowledge of the 2017 Sublease. On this basis, the delivery of the invoice would not have amounted to an act unequivocally recognising the continuance of the Lease.

76. In support of the proposition that a landlord does not waive its right of re-entry by accepting rent due before it had the requisite knowledge, he relied on a passage from *Woodfall* on *Landlord and Tenant Vol 1 Para 17.098* and two supporting authorities, *Price v Worwood (1859) 4 H & N 512* and *Osibanjo v Seahive Investments Ltd [2008] EWCA Civ 1282.*

76.1. At *Para 17.098*, the editors of *Woodfall* state that

> "It is well settled that acceptance of rent which accrued due after the date on which the right to forfeiture arose will waive the right to forfeit for any breach of which the landlord was aware on the date on which

the rent fell due. It is not a waiver of a breach committed or *of which the landlord became aware after the date on which the rent fell due* before acceptance of the payment" (My italics).

76.2. In *Price v Worwood (supra)*, a landlord brought an action, in ejectment, against his tenant owing to breaches of his obligations to insure. The action was brought on the basis that the landlord was entitled to forfeit the lease notwithstanding the receipt of rent from undertenants. The Court of Exchequer appear to have taken the view that the tenant's breaches of his insurance obligations amounted to a continuing breach of covenant and the receipt of rent due on the previous quarter date thus did not give rise to waiver. Baron Martin observed that "a receipt of rent, to operate as a waiver of a forfeiture, must be a receipt of rent due on a day after the forfeiture was incurred. The mere receipt of the money, the rent having become due previously, is of no consequence, and for the very plain reason that the entry for a condition broken does not at all affect the right to receive payment of a pre-existing debt". Although *Price v Worwood* may have been treated as authority for the proposition that a landlord does not waive its right of re-entry by accepting rent due before it had the requisite knowledge, on analysis it goes no further than preclude waiver if the rent fell due prior to the event giving rise to a right of forfeiture.

76.3. In *Osibanjo v Seahive Investments Ltd (supra),* the landlord forfeited a lease for breaches of the covenants in relation to alteration and user. It also presented a bankruptcy petition for rent arrears that accrued before it had knowledge of the breaches. To compromise the petition, the tenant sent a cheque encompassing the relevant arrears and other amounts due. The landlord banked the cheque, retaining an amount equal to the relevant arrears and repaying the balance. The Court of Appeal were satisfied that, in doing so, the landlord had not waived its rights of re-entry. However, their reasoning differed. They were all satisfied it was open to the landlord to bank the cheque and repay the balance without waiving its rights of forfeiture. However, there was a difference between Mummery and Rix LJ in relation to the basis on which the landlord was entitled to retain an amount for the relevant arrears. At Para 14, Mummery LJ reached his conclusion on the basis that the rent arrears "related to a period [before the landlord had] knowledge of the breaches of covenant". However, at Para 31, Rix LJ pronounced himself unsure whether a landlord could waive its rights of forfeiture "…by accepting rent with knowledge of the breach where that rent had

accrued due before knowledge of the breach". Later, at Para 32, he stated that he "…would be inclined to think that knowledge is what is necessary to found the waiver, since one cannot waive without knowledge, but that once there is the necessary knowledge it should not matter whether the rent which is accepted has accrued due before or after the date of knowledge". However, he concluded that the tenant was not entitled to rely on the point because "the judge found that there was no acceptance of rent as rent…" Unfortunately, Smith LJ agreed with both judgments without setting out the conceptual basis for doing so.

76.4. Notwithstanding these apparent inconsistencies of view, I am satisfied Mummery LJ's observations accurately state the law and his guidance should thus be followed. Prior to his judgment, there does not appear to be any binding authority on the point, certainly not among the authorities to which he referred in Paragraph 3 of his judgment. However, his views were expressed in clear and unambiguous terms and they formed the basis for his decision. Rix LJ's conclusion was on a different basis but he left the relevant issue open. If Smith LJ agreed only with *ratio* of their respective decisions – a course which was open to her – she can be taken to have agreed to dismiss the appeal on the basis *inter alia* that the landlord did not have the required knowledge when the liability for rent accrued. Moreover, whilst there is a measure of logic in Rix LJ's views and, if correct, they might yield greater certainty, they could give rise to practical difficulty in cases where there is a long period between the putative breach and the acquisition of the relevant knowledge. It also appears Mummery LJ's conclusion is consistent with the understanding of practitioners, as reflected in the above passage from *Woodfall.*

77. In the present case, the critical question is thus whether the liability of Mr Faiz and Ms Shakeela Faiz, as tenants, to pay the sum of £1,826.87 in respect of insurance rent only, accrued after the Council first obtained knowledge of the Sublease.

78. Mr Cawson submits that the answer to this question is yes. He submits that the Council's invoice dated 4th November 2019 for £1,826.87 is to be regarded as a fresh demand for which the tenants became liable to make payment within seven days under the provisions of Clause 3.2 of the Lease. If the Council's intention was simply to advise the tenants that their liability for insurance rent was now limited to 18th October 2019 when they were notified of the 2017 Sublease, the Council could have achieved that intention by sending a letter of clarification or a credit note.

79. Although Mr Cawson's case was skilfully presented, I am satisfied the tenants' liability for insurance rent was incurred under the original invoice dated 26th September 2019 and not under the invoice dated 4th November 2019. On analogy with the principle in *Mannai v Eagle Star [1997] AC 749*, the "invoices" are to be objectively construed by asking how they would appear to a reasonable recipient in the same factual context.

80. By the Lease, the tenants covenanted to pay "the Insurance Rent", as defined, in respect of the sums which the Council, as landlord, paid in insuring the demised premises under their covenant in Clause 5.2. These amounts were payable within seven days of demand. By their invoice dated 26th September 2019, the Council invoiced Mr Faiz and Ms Shakeela Faiz for insurance rent in respect of the period 2019-2020, i.e the period ending on 25th February 2020. This was plainly a demand for insurance rent under clause 5.2.

81. Following this invoice, the tenants advised the Council of the 2017 Sublease. In doing so, the tenants must be taken to have been aware they had entered into the 2017 Sublease in breach of covenant and there was a risk the Council would thus take steps to forfeit the Lease notwithstanding the contentions, in their solicitors' letter dated 18th October 2019, that the Council had waived the breach. When the Council sent the tenants a revised invoice in which they adjusted the insurance rent so as to include only the period ending on 18th October 2018, it would have been apparent to a reasonable recipient that the Council had thus elected to limit their demand for insurance rent to the period before they had knowledge of the breach. It would also have been apparent to a reasonable recipient that the revised invoice was no more than a re-calculation on that basis. In these circumstances, it cannot reasonably be suggested that, by delivering the revised invoice, the Council were acting consistently only with the continuation of the Lease.

82. Although it could reasonably be inferred that the Council delivered the revised invoice with the intention of reserving their rights of forfeiture, it is by no means clear that it was necessary for them to do so. The tenants' obligation to pay the insurance rent was incurred before the Council were notified about the 2017 Sublease. Whilst the original invoice dated 26th September 2019 incorporated an element in respect of insurance in respect of the period after 18th October 2019, a landlord does not generally waive its rights of re-entry by demanding and accepting rent in respect of a liability incurred before it has notice of the relevant breach regardless of whether the liability is in respect of future expenses. In the present case, the rents were payable in advance and the *Apportionment Act 1870* did not apply. Had it done so, the rents would only be apportioned to the date of termination of

the lease, not the date upon which the landlord acquired knowledge of the relevant breach of covenant. However, the Council could be seen to have delivered the revised invoice with the intention of eliminating doubt and reserving their rights of forfeiture. Of course, it is not open to landlords to reserve their rights of forfeiture if they have otherwise acted unequivocally to recognise the continuation of the lease. However outward evidence of their intention, objectively construed, is no doubt admissible for the purpose of construing their documents to ascertain whether they have made an election.

83. I am thus satisfied that the Council did not waive their right of re-entry through the delivery of their invoice dated 4th November 2019.

(9) Disposal

84. I shall thus dismiss the Claimant's claim for a declaration that the Council have waived their rights of re-entry and consequential relief. Conversely, the Council are entitled to a declaration that the Lease and the 2017 Sublease determined on 22nd November 2019. I shall hear further from counsel in relation to consequential matters and costs.