Neutral Citation Number: [2025] EWCA Civ 971

Appeal No: CA-2024-002618
Case Number: LC-2023-000815

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
Mr Justice Edwin Johnson, President [2024] UKUT 263 (LC)
ON APPEAL FROM THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
Judge D Jackson

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/07/2025

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE MOYLAN
and
LADY JUSTICE ASPLIN

- -

Between:

AP WIRELESS II (UK) LIMITED

Claimant/Appellant

v.

ON TOWER (UK) LIMITED

Defendant/Respondents

- -

David Holland KC and Wayne Clark KC (instructed by **Freeths LLP**) for the **Claimant** (the owner)

Oliver Radley-Gardner KC and Imogen Dodds (instructed by **Gowling WLG (UK) LLP**) for the **Defendant** (the occupier)

Hearing date: 15 July 2025

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JUDGMENT

This judgment was handed down remotely at 10:00am on 25 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

SIR GEOFFREY VOS, MASTER OF THE ROLLS :

Introduction

1. This appeal centres on the proper interpretation and legal effect of a single clause in a written agreement dated 11 March 1997. This agreement was entered into between the owner of Fields Farm, Congleton Road, Sandbach and Orange Personal Communications Services Limited to install and maintain telecommunications equipment including a phone mast on a site on the owner's land (the Agreement).

2. Clause 2.1 (clause 2.1) of the Agreement provided as follows:

> This Agreement shall come into effect on the date shown above and shall continue for no less than the Minimum Term [10 years from 11 March 1997]. It may be terminated by either party giving to the other not less than 12 months' notice in writing to expire at any time on or after the expiry of the Minimum Term.

3. Mr Justice Edwin Johnson (the judge) decided that the Agreement did not create a term certain. In those circumstances, he held that the tenancy purportedly created by the parties was void, and took effect as a licence. This was so notwithstanding that the other two requirements for a tenancy to exist, namely the payment of rent and exclusive possession, were present. The judge thought that his decision was compelled by the terms of clause 2.1 and the law, but that it was unsatisfactory (see the postscript to his judgment).

4. The owner (as appellant) advanced three arguments as to why the judge was wrong. Each had the conclusion that the Agreement ought to be regarded by the law as having created a term certain.

5. First, Baroness Hale had identified only two invalidating features at [93] of her judgment in *Mexfield Housing Co-Operative Ltd v. Berrisford* [2011] UKSC 52, [2012] 1 AC 955 (*Mexfield*). Both those features were absent in this case: (i) here the term was **not** of uncertain duration as, for example, was a term meaning "for the duration of the war" in *Lace v. Chantler* [1944] KB 368; (ii) here there was no fetter of uncertain duration on either parties' right to serve notice as, for example, in *Prudential Assurance Co Ltd v. London Residuary Body* [1992] 2 AC 386 (*Prudential)* where the tenancy was terminable on two months' notice but notice was not to be given until the land was required for road widening. I will call this the "invalidating features argument".

6. Secondly, the owner argued that the Agreement itself created a valid term certain for a minimum term of 10 years, terminable by either party giving 12 months' notice expiring on any day after the minimum term. I will call this the "interpretation argument".

7. Thirdly, the owner argued that, even if the Agreement was void for want of a certain term as the judge held, an annual periodic tenancy ought to have been inferred (as happened in *Prudential*), rather than defaulting to holding that the Agreement constituted a contractual licence. I will call this the "inferred periodic tenancy argument".

8. If the owner is right, the Agreement will be regarded as creating a valid tenancy (or there will be an inferred periodic tenancy) which will be renewable under the terms of

Part II of the Landlord and Tenant Act 1954, attracting a higher rent. If the owner is wrong, and the judge was right that the occupier holds only a contractual licence, that licence will be renewable under the terms of the Electronic Communications Code now contained in schedule 3A to the Communications Act 2003 (the Code), attracting a lower rent. Both parties accepted that our decision had consequences for numerous other agreements beyond the Agreement.

9. I have decided that all three of the owner's arguments are wrong, so this appeal should be dismissed. In relation to the invalidating features argument, Baroness Hale was not laying down any general rule at [93] of *Mexfield*. In relation to the interpretation argument, clause 2.1 is clear and unambiguous. It purports to create a term of 10 years that can be determined on any day on or after its 10th anniversary on 12 months' notice given by either party. The length of the tenancy purportedly created could not be determined when the Agreement was entered into and was, therefore, uncertain and invalid. Thirdly, in relation to the inferred periodic tenancy argument, the judge was right to refuse to infer a periodic tenancy. Following the reasoning of the Supreme Court in *Mexfield*, allowing the terms of the Agreement to survive as a valid contractual licence best accords with what must be taken to have been the intentions of the parties from the terms of the Agreement.

10. With that introduction, I shall give my more detailed reasons under the following headings: (i) the relevant terms of the Agreement, (ii) the authorities in chronological order, and (iii) each of the three arguments I have already described.

The relevant terms of the Agreement

11. The Agreement was headed "Agreement for the Installation of PCN Equipment – Green Field". It is also worth noting that neither the owner nor the occupier is an original party to the Agreement. Both are assignees.

12. Clause A provided that the owner was "entitled to a legal estate in the [Site]", a provision which the owner points out would have been unnecessary if a licence had been intended. Clause C provided for the occupier to pay a "Tariff of £3,300 per annum exclusive of VAT". Clause D provided for a "Minimum Term" of 10 years from 11 March 1997. The definition of Minimum Term in the attached terms and conditions said that it was the "period set out in Clause D above".

13. Clause 2.2 of the (terms and conditions of) the Agreement provided that "[n]otwithstanding the provisions of clause 2.1, [the occupier] may terminate [the Agreement] at any time on not less than 3 months' prior written notice expiring on a Payment Day [defined as 31 March, 30 June, 30 September and 31 December]" if the Site was no longer suitable for the occupier's equipment.

14. Clause 3.1 provided that the Tariff was to be calculated from 14 August 1996 and was payable quarterly in advance on the Payment Days (as defined). Clause 9.1 provided for termination of the Agreement in the case of arrears of payments or other substantial breaches of the occupier's obligations. Clause 10.1 was relied upon particularly by the owner, since it recited that it was the intention of the parties that the Agreement should bind their successors in title.

15. A supplemental agreement dated 2 November 2000 between the original parties to the Agreement increased the Tariff to £5,000 from 2 November 2000.

The authorities in chronological order

16. Undoubtedly the two most relevant authorities to what we have to decide are *Prudential* and *Mexfield*. In deference to the fact that the parties and the judge referred to a range of other authorities, I shall mention some of them briefly in this section of my judgment.

17. In *Re Threlfall* (1880) 16 Ch D 274, a mortgage deed contained an attornment clause under which the mortgagor became a tenant to the mortgagee from year-to-year at a rent of £800 per annum payable quarterly. The mortgage could determine the tenancy without notice after the end of the first quarter. The Court of Appeal held that an annual periodic tenancy had indeed been created as the attornment clause provided, not a tenancy at will as contended for by the mortgagor.

18. In *Lace v. Chantler*, there was a sub-letting expressed by the following words in a rent book: "furnished for duration". The tenant argued that the words meant that the property had been let to him for the duration of the war. The Court of Appeal upheld that claim, but held that such a tenancy was void as it was for an uncertain term. Lord Greene MR also refused at pages 371-2 to construe the agreement as either an agreement for a lease or a valid licence. He held that "[t]he intention was to create a tenancy and nothing else".

19. In *Amad v. Grant* [1947] CLR 327, the High Court of Australia was construing a written tenancy agreement providing for "the weekly rent of £2 2s. 6d. payable in advance such tenancy to commence on [17 May 1937] and not cease … until one month's notice in writing shall have been given … and such tenancy to continue for the term of three years at the least". The majority interpreted this agreement as a letting for a fixed term of three years followed by a monthly periodic tenancy (see Latham CJ at page 336). The owner suggested that this case was most like this one, but I do not agree. On the words used, there was clearly in that case a fixed term **plus** a continuing periodic tenancy. Indeed, the difference between the minority and the majority was only as to whether what followed the three-year fixed term was an annual or a monthly tenancy. In our case, as will appear, there was just a fixed term and a notice period.

20. *Breams Property Investment Co. Limited v. Stroulger* [1948] 2 KB 1 (*Breams*) was another similar case. There was in that case an agreement for a periodic quarterly tenancy subject to a clause that provided that the landlord would not, during the period of three years from the start, serve notice to quit unless they required the property for their own occupation. It was argued that the clause was repugnant to a quarterly tenancy and should be regarded as deleted (see Scott LJ at page 6). It was held that the clause was not repugnant to (i.e. inconsistent with) a periodic tenancy. The question of the certainty of the term does not seem to have been considered. Baroness Hale interpreted *Breams* at [88] in *Mexfield* as turning "the quarterly tenancy into a three-year term terminable by the tenant on notice before that, to be followed by a normal quarterly tenancy after that".

21. *Reohorn v. Barry Corporation* [1956] 1 WLR 845 was a redevelopment case under Part II of the Landlord and Tenant Act 1954. The Court of Appeal allowed renewal, and suggested a new tenancy from 1 May 1956 to 31 December 1956 and thereafter until

determined by 6 months' notice given by either party to expire at any time on or after 31 December 1956 (see Denning LJ at page 851). There was no argument about whether what the court suggested constituted a term certain or not. I cannot see how such a determination assists us in any way.

22. Reliance was placed by the owner on the case of *Ashburn Anstalt v. Arnold* [1989] Ch 1 (*Ashburn*) which *Prudential* expressly overruled. Lord Templeman said at page 395C-G in *Prudential* that *Ashburn "*if it was correct, would make it unnecessary for a lease to be of a certain duration". I can gain no assistance from *Ashburn*.

23. *Harler v. Calder* (1989) 21 HLR 214 was a case where O'Connor LJ held at page 217 that the parties could contract out of the common law rule that a notice to quit should expire on a rent day. The facts are quite unlike those in this case.

24. I come then to *Prudential*, which, as I have said, is important to our determination. It concerned a lease of a strip of land by the highway which was expressed to "continue until the … land is required by the council [landlord] for the purposes of the widening of" the highway. The House of Lords decided that the lease was void as being for an uncertain term, but that a yearly tenancy was to be inferred from the tenant's possession of the property and payment of rent. The provision allowing termination for road widening was inconsistent with a yearly tenancy and, therefore, inapplicable.

25. Lord Templeman explained at page 392B-C as follows:

> When the agreement in the present case was made, it failed to grant an estate in the land. The tenant however entered into possession and paid the yearly rent of £30 reserved by the agreement. The tenant entering under a void lease became by virtue of possession and the payment of a yearly rent, a yearly tenant holding on the terms of the agreement so far as those terms were consistent with the yearly tenancy. A yearly tenancy is determinable by the landlord or the tenant at the end of the first or any subsequent year of the tenancy by six months' notice unless the agreement between the parties provides otherwise.

26. Lord Templeman then referred to a number of the old cases before resoundingly endorsing *Lace v. Chantler* and reversing the Court of Appeal, which had inferred a yearly tenancy subject to the road widening clause. He said this at page 394F-G:

> … I consider that the principle in [Lace v. Chantler] reaffirming 500 years of judicial acceptance of the requirements that a term must be certain applies to all leases and tenancy agreements. A tenancy from year to year is saved from being uncertain because each party has power by notice to determine it at the end of any year. The term continues until determined as if both parties made a new agreement at the end of each year for a new term for the ensuing year. A power for nobody to determine or for one party to be able to determine is inconsistent with the concept of a term from year to year.

It was for those reasons that he held that the road widening term was inconsistent with the periodic tenancy that was to be inferred. He restored the order of Millett J, who had held that six months' notice was a valid notice even though the landlord was, by that time, not the road widening authority and there were no plans to widen the highway.

27. Lord Browne-Wilkinson concurred at pages 396-7 and described the outcome in *Prudential* as "bizarre". He said it resulted from the "application of an ancient technical rule of law which requires the maximum duration of a term of years to be ascertainable from the outset". He said that nobody had "produced any satisfactory rationale for the genesis of the rule", but limited himself to expressing the hope that the Law Commission might see whether there was in fact any good reason for "maintaining a rule which operates to defeat contractually agreed arrangements between parties". Lords Mustill and Griffiths agreed with that observation.

28. In *Mexfield*, the Supreme Court revisited and (according to the headnote) applied *Prudential*. The claimant housing association had granted the tenant a monthly tenancy at a weekly rent subject to clauses 5 and 6 limiting termination. Clause 5 allowed the tenant to terminate on one month's written notice, and clause 6 provided that the landlord could bring the tenancy to an end by the exercise of the right of re-entry **only** if rent was in arrears by 21 days or there were other breaches by the tenant or in other specified circumstances, none of which applied in the circumstances of that case. The landlord served one month's notice to quit without relying on clause 6, and argued that the tenancy was invalid and that a weekly or monthly periodic tenancy was to be inferred, which could be determined by the notice it had served. The Supreme Court overruled the lower courts, holding that clause 6 made the tenancy void as being for an uncertain term, but that, since the agreement would have given rise to a tenancy for life prior to 1926, the effect of section 149(6) of the Law of Property Act 1925 was that the agreement was to be treated as a tenancy for a term of 90 years. It should be noted that the section 149(6) route is not available in this case as the parties are not individuals.

29. Lord Neuberger applied both *Lace v. Chantler* and *Prudential* to hold at [33], in relation to periodic tenancies, that whilst a fetter on termination for a specified period could be valid (see *Breams*), "a fetter on a right to serve notice to determine a periodic tenancy was ineffective if the fetter is to endure for an uncertain period" (see *Breams* and Lord Neuberger's interpretation of that case at [55]). At [34]-[35], Lord Neuberger associated himself with Lord Browne-Wilkinson's disquiet over the state of the law, saying that there was no "practical justification" for the law as he had expressed it to be. Lord Neuberger did not, however, support "jettisoning the certainty requirement, at any rate in this case" for a number of reasons that need not now be recited.

30. Lord Neuberger also held at [59]-[60], *obiter*, that, if the agreement had not created the 90-year term (which it did), the tenant would nonetheless have been entitled to enforce her contractual rights to occupy subject to clause 6. He acknowledged that both *Lace v. Chantler* at pages 371-2 and *Prudential* had rejected the contractual solution. In *Lace v. Chantler*, it was said that the intention was to create a tenancy and nothing else, and in *Prudential*, the road widening provision was treated as a void fetter on termination for an indefinite period. Lord Neuberger held at [60]-[63] that Lord Greene MR's view in *Lace v. Chantler* could not withstand principled analysis. The fact that the parties might have **thought** they were creating a tenancy was no reason for not holding that they had **in fact** agreed a contractual licence, as in *Street v. Mountford* [1985] AC 809.

31. At [66]-[67], Lord Neuberger discussed the question of whether the void tenancy in that case would be a contractual licence or a periodic tenancy on the terms of the agreement insofar as consistent with a periodic tenancy (as in *Prudential*). He concluded at [67] as follows:

> But the ultimate basis for inferring a tenancy (and its terms) is the same as the basis for inferring any contract (and its terms) between two parties, namely what a reasonable observer, knowing what they have communicated to each other, considers that they are likely to have intended. Given that no question of statutory protection could arise, it seems to me far less likely that the parties would have intended a weekly tenancy determinable at any time on one month's notice than a licence which could only be determined pursuant to clauses 5 and 6.

32. Lord Neuberger agreed with what Lords Mance and Clarke also said to similar effect (see Lord Mance at [102]-[103], and Lord Clarke at [109]). Lords Hope, Walker, Mance, Clarke and Dyson agreed with Lord Neuberger but gave judgments of their own. Baroness Hale also concurred in the result. I mean no disrespect by not dealing with the intricacies of these concurring opinions. I will deal with the passage in Baroness Hale's judgment relied upon in relation to the invalidating features argument, in due course.

33. Finally, by way of authority, I would mention Lewison LJ's judgment in *Avondale Park Ltd v. Delaney's Nursery Schools Ltd* [2023] EWCA Civ 641, [2023] L&TR 29, where he endorsed the passage from Lord Templeman's speech in *Prudential* that I have cited at [25] above.

The invalidating features argument

34. The owner relies on [93] of Baroness Hale's speech where she said this:

> So we have now reached a position which is curiouser and curiouser. There is a rule against uncertainty which applies both to single terms of uncertain duration and to periodic tenancies with a curb on the power of either party to serve a notice to quit unless and until uncertain events occur.

35. The owner spells out of this passage an all-encompassing rule that there are two, and only two, invalidating features of an uncertain term: (i) a single term of uncertain duration as in *Lace v. Chantler* where the term was for the duration of the war, and (ii) a fetter of uncertain duration on either parties' right to serve notice (for example the road widening condition in *Prudential*). So, the owner argued, since the term of 10 years was not of uncertain duration here, and since there was no fetter of uncertain duration on either parties' right to serve a notice in this case, the tenancy is valid.

36. In my judgment, the owner has put the cart before the horse. The first question to ask is as to the proper interpretation of the contract that the parties agreed. Until that is decided, one cannot tell whether the requirement for a term certain is satisfied.

37. Here, as appears from the next section of this judgment, there was an uncertain term because it could not be said with certainty at the start of the term of 10 years when it might end. It could end on any day chosen by one of the parties on or after 11 March 1997. It was not saved by the exception for periodic tenancies terminable by notice at the end of a repeating period, because the agreement did not create a renewable periodic tenancy at all.

38. Accordingly, in my judgment, nothing that Baroness Hale said at [93] or elsewhere creates the rule contended for, or saves the validity of the Agreement.

The periodic tenancy argument

39. The owner argued under this heading that, on the correct interpretation, the Agreement was either (i) a yearly tenancy determinable on any date after 12 months' notice with a minimum duration of 10 years, (ii) a 10-year fixed term followed by a yearly tenancy which was terminable on any date after 12 months' notice, or (iii) a 10-year fixed term followed by a daily periodic tenancy terminable on 12 months' notice.

40. Each of these three possibilities is, in my judgment negated by the express wording of the Agreement. Mr David Holland KC, leading counsel for the owner, seemed in argument to accept at one stage that clause 2.1 was unambiguous. As it seems to me, that conclusion is inescapable. Clause 2.1 provides for three things: first that the Agreement "shall come into effect on" 11 March 1997; secondly that the Agreement "shall continue for no less than" 10 years from 11 March 1997; and thirdly that the Agreement "may be terminated by either party giving to the other not less than 12 months' notice in writing to expire at any time on or after" the expiry of the Minimum Term (i.e. on or after 11 March 2007).

41. It is not disputed that the judge found that the occupier had been given exclusive possession of the Site. Nor was it disputed that the occupier paid rent (called a Tariff) in accordance with the Agreement, namely by quarterly instalments on the nominated Payment Days, 31 March, 30 June, 30 September and 31 December in each year of their occupation. The only question for us is, therefore, whether what was created by the terms of the Agreement and these events was a tenancy and, if so, what kind of tenancy. If it was not a tenancy, what was it?

42. In my judgment, the language of the Agreement shows that the parties intended to create a tenancy for a Minimum Term of 10 years from 11 March 1997, terminable by either party giving not less than 12 months' notice in writing to expire at any time on or after 11 March 2007.

43. The owner's first interpretation, namely that these words created a yearly tenancy determinable on any date after 12 months' notice with a minimum duration of 10 years is negated by the language of Minimum Term, as opposed to minimum duration. There is nothing in any of the words of the Agreement that talk about the creation of a tenancy from year-to-year, and certainly nothing that suggests there was an annual periodic tenancy at inception starting on 11 March 1997. The Tariff is not even calculated from the inception day, namely 11 March 1997, but from 14 August 1996. The owner suggested that *Breams* was a comparable case. I do not agree. In *Breams*, the tenancy was expressed to be a periodic tenancy with a term restricting the service of a notice to quit for three years. Here, we have a tenancy for a 10-year term with a clause restricting termination before the expiry of that term. Baroness Hale's interpretation of *Breams* at [88] in *Mexfield* is of no help to the owner, because she only said that the restriction on termination for three years turned the quarterly tenancy into "a three-year term terminable by the tenant on notice before that, to be followed by a normal quarterly tenancy after that". Even if this interpretation is correct, here there were no words to create the periodic tenancy as there were in *Breams*.

44. The owner's second interpretation to the effect that the Agreement created a 10-year fixed term followed by a yearly tenancy which was terminable on any date after 12 months' notice does not work for the same reasons. There are no words indicating that

what was intended was a 10-year term followed by a tenancy from year-to-year incepting on 11 March 2007. The Tariff Payment Days are not referable to the period of a year following 11 March 2007, and the Tariff was not calculated by reference to that period. The termination provision is not what one would expect from a yearly tenancy. In submissions, Mr Holland repeatedly described clause 2.1 as creating a 10-year term **and** then a periodic tenancy, but that is simply not what the words say. There is no "and" about it. The words create a minimum 10-year term and provide for that tenancy to be terminable by either party giving not less than 12 months' notice in writing to expire at any time on or after 11 March 2007. There is, indeed, a question as to whether a periodic tenancy ought to be inferred, but that question falls, to my mind, to be considered at a later stage of the analysis. As a matter of interpretation of the Agreement, no periodic tenancy was created after 11 March 2007.

45. The owner's third interpretation is a 10-year fixed term followed by a daily periodic tenancy terminable on 12 months' notice. Again, I cannot see how this can be extracted from the words the parties used for the same reasons as are given above.

46. For these reasons, I reject the argument that the Agreement created a valid term certain. The term of the tenancy purportedly created by the Agreement was uncertain at its inception on 11 March 1997, because it was, on its terms, capable of lasting for an indeterminate period ending (possibly) on any day from 11 March 2007 for ever afterwards. On the clear authority, binding on this court, of both *Prudential* and *Mexfield*, the tenancy purportedly created by the Agreement was void at its inception. The owner's third argument raises the question of the legal consequences of that invalidity.

The inferred periodic tenancy argument

47. As I have said, the owner argued that, assuming the invalidity of the Agreement, the judge ought to have inferred a yearly periodic tenancy from the start (as happened in *Prudential*), rather than holding that the Agreement constituted a contractual licence (as would have been held in *Mexfield*, had section 149(6) of the Law of Property Act 1925 not applied in that case, but not in this case). The occupier supported the judge in allowing the parties' intentions, as expressed in the Agreement, to take effect as a contractual licence.

48. I have cited the relevant passages from *Prudential* and *Mexfield* above, because it seems to me that they are not entirely aligned on this point. The House of Lords in *Prudential* overruled the Court of Appeal that had given effect to the contractual term agreed by the parties prohibiting termination unless the land was required for road widening. The 7 judges in the Supreme Court in *Mexfield* replaced the void tenancy with a contractual arrangement on the same terms, including clause 6 restricting the landlord from terminating the arrangement save in specified circumstances.

49. Whilst acknowledging that the actual decision on this point in *Mexfield* was *obiter*, I believe we should follow the thrust of the court's approach.

50. Lord Neuberger's statement of the position at [67], supported by other members of the court, is entirely orthodox law. First, once a tenancy is void for want of a certain term, the court is faced with the choice of inferring a tenancy or giving effect to the parties' intentions contractually. As Lord Neuberger said, the question is what a reasonable

observer, knowing what the parties have communicated to each other, would consider that they are likely to have intended.

51. In this case, to infer that the parties intended an annual or daily periodic tenancy on 11 March 1997 is a real stretch. None of the express terms of the Agreement accord with that inference. As the occupier put the matter in submissions, the court must look for the "best fit". A periodic tenancy from the outset on 11 March 1997 is not a good fit at all. It is inconsistent with many of the terms the parties agreed. It is inconsistent with clause 2.1 for the reasons I have given. It is inconsistent with the Payment Days and with the calculation of the Tariff from quite a different date than the inception date. It is only really consistent with the exclusive possession that was given and clauses A and 10.1 that do, I accept, imply that the parties thought they had agreed a tenancy.

52. Conversely, the inference of a contractual licence on the same terms as the Agreement respects almost all the terms that the parties agreed, including the termination provision in clause 2.1. I do not think that the court should be willing to disregard the intentions of the parties unless there really is no other possible course. Here, the course the judge adopted was a reasonable one in my view. I am conscious that the judge thought the outcome unsatisfactory. For my part, I am not sure that there is anything at this level that we can do about that. I am certain that the judge was right to follow *Mexfield* and to reach the conclusion he did as a matter of law, even if I have perhaps expressed my reasons more shortly.

53. I would, therefore, reject the owner's inferred periodic tenancy argument, and hold that the judge was right to give effect to the Agreement as a contractual licence.

Conclusion

54. I would, for the reasons I have given, dismiss this appeal.

LORD JUSTICE MOYLAN:

55. I agree.

LADY JUSTICE ASPLIN:

56. I too would dismiss the appeal for the reasons given by the Master of the Rolls.