

IN THE COUNTY COURT AT CENTRAL LONDON

CLAIM NO: K04CL737

HHJ SAGGERSON

Court 62, TMB, RCJ, Strand, WC2

Hearing dates: 15-19 September 2025

BETWEEN:

MINISTRY OF SOUND LIMITED

Claimant

-and-

(1) THE BRITISH AND FOREIGN WHARF COMPANY LIMITED

(2) THE MAYOR AND COMMONALITY & CITIZENS OF THE CITY OF LONDON

(3) B&F WHARF DEVELOPMENTS LIMITED

Defendants

Ms Caroline Shea KC Counsel for the Claimant (instructed by Stephens Scown LLP).

Ms Camilla Lamont Counsel for the First Defendant (instructed by Broadfield Law UK LLP).

The Second and Third Defendants did not participate

JUDGMENT

Handed down electronically effective 10.30am 5 November 2025

Introduction

1. These proceedings concern the Claimant's claim for a new business tenancy of premises situated at 103/105 Gaunt Street, London SE1 6DP ("the Property") pursuant to Part II of the Landlord and Tenant Act 1954 ("the Act"). The Claimant ("Tenant", "C" or Ministry of Sound ["MoS"]) is the Tenant in occupation of the Property for the purposes of its business as a nightclub pursuant to a lease dated 23.03.2011 for a term of 15 years beginning on 29.09.2009 ending on 29.09.24 ("the Lease"). The Lease continues by operation of the Act. C's parent company, Ministry of Sound Group Ltd, is party to the lease as guarantor. The passing rent is £340,000 per annum. C served notice under s.26 of the Act on 11.10.23 requesting a new tenancy commencing on 1.10.24.

2. C's claim for a new tenancy for a fifteen-year term within the Act is not opposed. The dispute is limited to the terms on which the renewal should be granted. C issued proceedings to that end on 14.12.23.
3. The Agreed List of Issues can be digested as follows.
 - 3.1 The overarching issue is whether the new lease should include a landlord's redevelopment break option in the context of which the Court must decide whether there is a "real possibility" of development during the term of the new lease, namely 15 years from the commencement of the new tenancy.
 - 3.2 Whether the Court should exercise its discretion to include such a break option.
 - 3.3 Whether the new lease should
 - (i) Delete the definition of "Comparable Offices" in the rent review provisions.
 - (ii) Incorporate the departures from the terms of the Lease proposed by C.
 - 3.4 Rent payable under the new lease valued in accordance with s.34 of the Act.
4. The Property that is demised to C under the terms of the Lease and occupied by it for business purposes (which comprises "the holding" under s.23 of the Act) is registered at HM Land Registry under title number TGL356009.
5. The First Defendant ("Landlord" or "D1") is the Landlord under the Lease as freeholder of the rear part of the Property ("the Rear Section"). The Second Defendant ("D2") remains, for now, the registered freehold proprietor of the Front Section of the Property ("the Front Section"). Proceedings against D2 are stayed and D2 is not taking part in the trial of the lease renewal. The Third Defendant ("D3") acquired D2's freehold interest in the Front Section by transfer dated 10.01.25 but the registration of that transfer has not yet completed. D3, a wholly owned subsidiary of D1, is not separately represented in these proceedings.
6. The local planning authority is the London Borough of Southwark ("Southwark LBC") which operates in conjunction with powers exercisable by the Greater London Authority and the Mayor of London ("the GLA").

Orientation

7. So, D1's title is held as below and the area illustrated in the map at *Figure 1* below. *Figure 2* is an aerial view. The colours are likely to be available only in the electronic version of this Judgment.
 - 7.1 The Rear Section of the Property is held by D1 as freehold proprietor (HMLR title 338836). This is numbered 3 and coloured green.
 - 7.2 The Front Section of the Property is held by D1 on a long lease dated 8.9.41 (HMLR leasehold title SGL264346) for a term of 99 years from 25.12.1938

which expires on 25.12.2037. This is numbered 4 and coloured blue on *Figure 1* and opens onto Gaunt Street, SE1.

Figure 1.

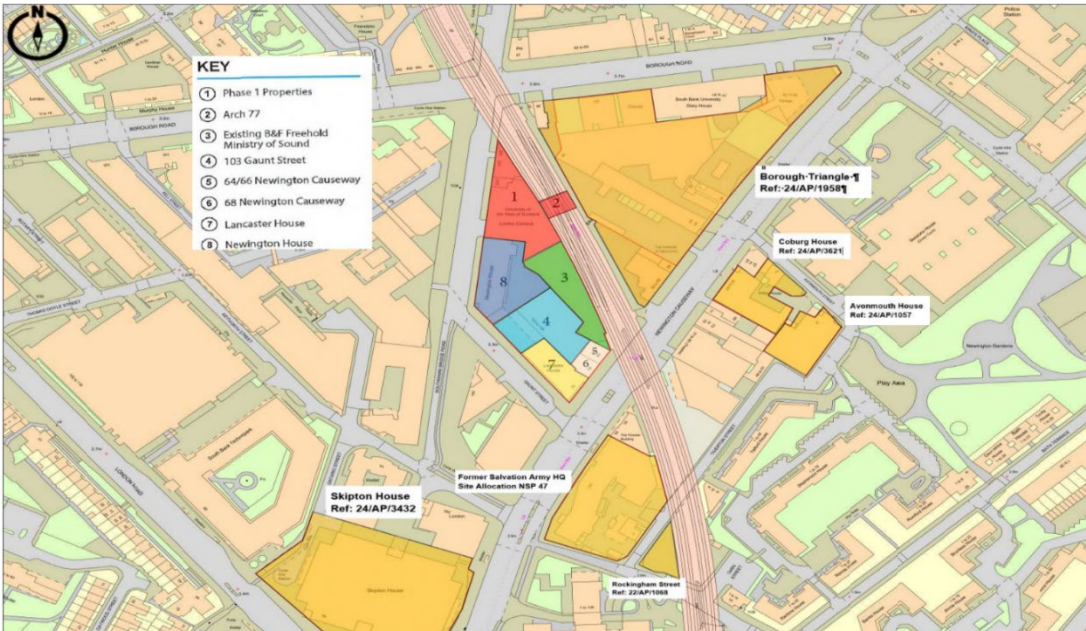


Figure 2



8. D1 is unable to grant a new lease of the Front Section beyond the contractual expiry of its own leasehold title. It is common ground that the only way in which C's request for a 15 year term can be accommodated, given D1's limited interest in the Front Section, is by way of a renewal lease granted by D1 to commence on the determination of the Lease running to the expiry of the Headlease and a separate grant of a reversionary lease of the whole of the Property granted jointly by D1 and D3 to take effect thereafter. The court has power to grant such a reversionary lease under Sch. 6, para 2 of the Act and the parties agree that the court should proceed accordingly.
9. Some other rear sections of the business operated by C are located in three pairs of railway arches held under separate arrangements with nominees for the Arch Company Properties Ltd ("Arch Co") and are not demised by the Lease and are not the subject of this lease renewal. Arch 77 (numbered 2 in red – *Figure 1*) is a fire escape used by C's business and is not subject to these proceedings.
10. The land comprised in numbers 1 to 8 (excluding 2) to the west of the railway line is known as the "Quadrilateral" site. Until July 2024 the Quadrilateral was of interest to a group of property owners interested in the coloured plots in *Figure 1*. This loose group was known as the "Consortium" and it included D1, The City and Brightbay Real Estate Partners ("Brightbay"). The land to the east of the railway line coloured orange is known as the "Triangle". References in the documents to "Phase 1" refer to the land numbered 1 and coloured red. The rest of the Quadrilateral is referred to as "Phase 2". Lancaster House is numbered 7 and coloured yellow. This element of the Quadrilateral has sometimes figured in Quadrilateral schemes but is more often treated separately. Lancaster House had included ground floor office space occupied by the recording limb of MoS.
11. The Property is a nightclub and accommodates up to 1538 visitors at any given time (*Figure 3* below). The event and ancillary spaces include:
 - 11.1 *The (Dance) Box*: The club's "headline" room featuring a state-of-the-art sound system with a floor designed to absorb vibrations.
 - 11.2 *The "103" or main bar*: A space with a bar and DJ booth, often used as the club's warm-up area.
 - 11.3 *The Baby Box* (Arch 86 not part of the Property) & *The Loft*: Smaller rooms offering a variety of music styles and private events.
 - 11.4 *The Courtyard*: An open-air space used for summer events. The public entrance to the club is located on Gaunt Street, where visitors arrive and queue before entering and undergoing a security process i.e. full body and bag searches.
 - 11.5 *A VIP area and balcony*: These smaller spaces speak for themselves.
 - 11.6 *Office space*.
 - 11.7 *The Arches spaces* (not part of the Property) provide additional facilities such as Female WCs and means of escape (see paragraph 9 above).

Figure 3

Area	Permitted Occupant Load
Main Bar	538
Box	530
Baby Box	136
VIP Area	104
Loft	143
Balcony	87
Total	1,538

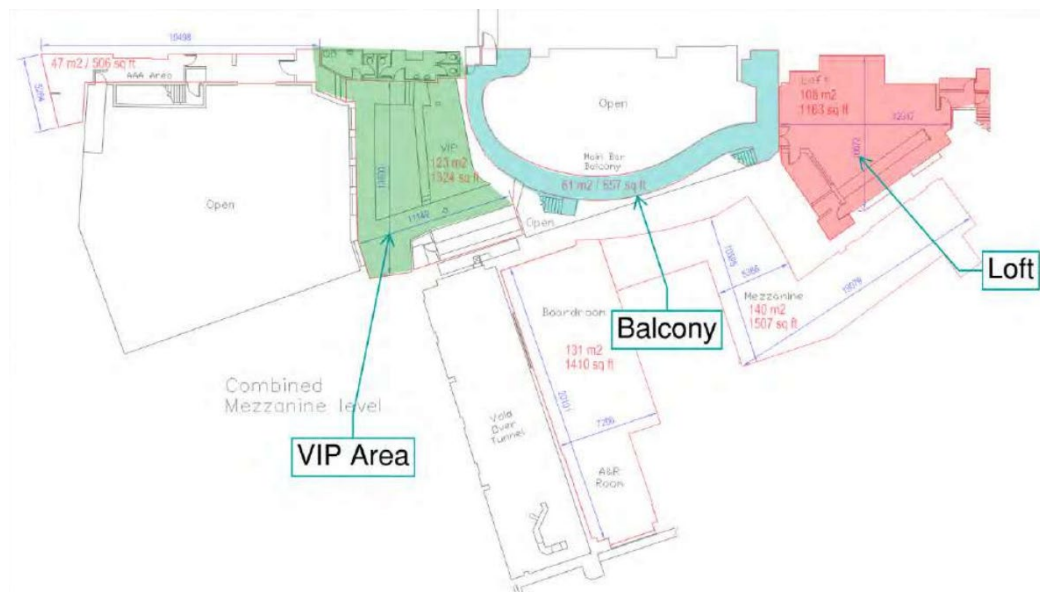
12. Figures 4 and 5 represent the current layout across two floors at least sufficiently to give a general idea. The faint 90 degree long rectangles in the top left of Figure 4 describe the fire escape route referred to at number 2 (in red) in Figure 1¹.

Figure 4 – Ground Floor



¹ I have used illustrative material from the Fire Strategy Report (Appendix ER5 to the Report of Philippa Gee-Merrett). The admissibility of this Fire Strategy Report is contested, but for orientation and illustrative purposes I do not consider the information reproduced here to be controversial.

Figure 5 - Upper Floor



Witnesses & Documentation

13. I heard factual evidence from Mr Lohan Presencer (C) and Mr George Stanhope Pitt (D1) each of whom gave three statements. This is not a case that turns on the competing credibility of the factual witnesses. The resolution of the matters in dispute turns on how one applies settled principles to a complex landscape of circumstances. The way in which Mr Pitt's witness statements were mediated through legal advisers, as he candidly accepted, was subject to some criticism, but I am satisfied that he has considered the contents carefully and the statements reflect his personal narrative.
14. I also heard evidence and updated evidence from planning experts and valuation experts for each participating party.
15. I was assisted by twelve eccentrically indexed lever arch files of documents (and electronic versions) and clips of documents relevant to a number of "eve of trial" applications to update the evidence which applications have been disposed of by consent. There were also travelling drafts of documents such as the List of Issues, Chronology and Schedule of Disputed Terms in respect of the Renewal Lease. Square footage measurements were ultimately agreed. Navigating all this would have proved more troublesome without the help of skeleton arguments and speaking notes from Ms Shea KC and Ms Lamont. I am grateful to both Counsel.

C's Business Operation

16. C operates under a premises licence, which permits a wide range of activities, including:
 - 16.1 Opening hours: 24 hours a day, seven days a week;

- 16.2 Permitted activities: on-premises sale of alcohol, live and recorded music, dance performances, film exhibitions, boxing and wrestling entertainment, indoor sporting events, and entertainment similar to live or recorded music;
- 16.3 Late night refreshment: permitted from 23:00 to 05:00, daily.

In addition:

- 16.4 The 24 hour, seven days a week premises licence is a comparative rarity;
- 16.5 The venue is a destination rather than being part of an established leisure pitch;
- 16.6 It is situated in a cluster of properties between The Borough and Elephant and Castle, in an area that all agree is ripe for development;
- 16.7 The Property is well situated, fairly central and easy to get to with good transport links, including night-time bus services;
- 16.8 The existential threat posed to the night-time economy by the Covid-19 social restrictions has now become historical. There was no evidence about MoS's operational obligations or its operational capability, popularity or status that I considered persuasively suggested that MoS is now operating at a sub-optimal level for pandemic-related reasons.
17. The business carried on by C at the Property is known as Ministry of Sound. As described by Mr Lohan Presencer (Executive Chairman of C since 2006 and closely concerned with the management of MoS since 1999) which evidence, to this extent I accept, MoS is amongst the most well-known nightclubs in the UK and is internationally renowned. MoS opened in September 1991. There was some corporate restructuring in its early days and the club operated under a previous lease between Pocock Brothers Limited and Danceclub Limited of 15 years from 29.09.94.
18. MoS was inspired by a club in New York City called Paradise Garage. Capital was secured and a disused bus garage in Elephant and Castle, Southwark (the Property) was chosen as the venue. Preparing for the opening of MoS in 1991 included the building of its famous sound system. The original nightclub opened under a dance hall licence without alcohol, later a 24-hour entertainment and alcohol licence was obtained from Southwark LBC. MoS became a cultural and social phenomenon. The business expanded and released records² which featured the prominent logo and DJs from the club. Ministry of Sound Recordings became one of the largest independent record companies in the world before that side of the business was sold to Sony Music in 2016. The business had other spin-offs including a merchandise store in Covent Garden. The nightclub was the focal point of what became an internationally recognised brand. MoS promotes and operates three of its own club nights a week at the venue: one on Friday, one on Saturday and one on a Tuesday which is predominantly aimed at the student market. The rest of the week is taken by external promoters or events, although on those nights MoS still operates the

² Through an associated company.

venue. The venue is also hired out for corporate and private events. These private events are a significant element of the business, especially in the lead-up to Christmas. The Property is licenced for weddings. MoS also hosts a variety of film and video projects. The Property is also head office for the entirety of C's management team. This is all achieved with only 34 full time employees and 74 part-timers with plans for some expansion in the workforce.

19. Mr Presencer maintains that the business of C will become untenable if D1 gets its way with regard to a redevelopment break clause. He says that an uncertain occupational future would destabilise C's essential operational decisions and relationships and threaten the viability of the business. If C found itself in a position where it had to cancel long-term bookings, sponsorship deals or other contracts due to uncertainty arising from lack of security of tenure, there would be serious financial, reputational, and potentially legal, consequences. These factors need to be seen in the context of what he describes as significant capital investment in the business and the Property since re-opening after Covid-19 (about £1.3million) and plans in the near future for further substantial investment from early 2026 which is likely to be in the region of £1million. He points to the fact that C has incurred professional costs north of £2.5million in recent years addressing, responding to and, in some cases, participating in theoretical but ultimately unsuccessful redevelopment schemes and proposals. The amount of managerial time and effort invested in these matters is, he implies, immeasurable.
20. I accept that Mr Presencer's evidence is mostly a genuine attempt to outline his concerns about C's business. I accept what he says on the facts as digested above, but I reject his conclusions. His evidence about the potential existential threat to C's business if a break clause is included in the Renewal Lease is, in my judgment, exaggerated. My impression of his evidence was that, at least in principle, new, dedicated basement club premises on site would be suitable and potentially attractive for MoS. His concern was anchored, as it seemed to me, in continuity provision for MoS during redevelopment and the acoustic mitigation demanded by "agent of change" principles in the context of any otherwise realistic proposals.
21. Mr Presencer recognises something of a potential logical misstep in C's case. If the prospect of redevelopment affecting the Property is negligible or in practical terms non-existent, and the result of a break clause would reduce the new rent, then why should C remain so vehemently opposed to the inclusion of a redevelopment break clause? The answer Mr Presencer gives centres on the proposition that it is not a logical misstep at all. He takes up this particular theme in his second witness statement. A development break clause would, he maintains, create a significant and continuing blight on the MoS business. Such a clause would seriously impact the tactical and strategic medium and long-term planning and operation of C's business amounting to an existential risk. He says this in paraphrase (in his second witness statement):

I appreciate this fact gives rise to a line of argument that if redevelopment of the Club is in fact wholly unlikely, the inclusion of a landlord's rolling break clause for redevelopment in the new lease should not therefore worry MoS. From a commercial point of view, that is entirely the wrong way to look at the issue. From MoS's perspective, the very existence of a landlord's rolling break clause is a major threat, whatever the prospects of redevelopment, because it creates constant uncertainty and undermines confidence to invest in the Club. MoS would be forced to run its business in the knowledge that the Landlord could seek to terminate the lease at short notice at any point. That fundamental insecurity would discourage capital investment, weaken our negotiating position with suppliers and partners, and create a climate of instability that would be incredibly damaging in and of itself. We could not rationally sustain ongoing investment with the looming risk of termination at such relatively short notice and with no secure window to recover investment or plan for the future. The uncertainty would also significantly impair the goodwill and value of our business, which would have a major adverse impact on our ability to secure outside financing and investment in the Club.

22. Not much is known about C's finances, turnover or profitability or its precise inter-relationship with other businesses like the recording company. There is little financial disclosure beyond Mr Presencer's broad narrative. The expenditure referenced above, past and future, is significant. I am told that C charges as much as £100,000 per event for private functions. The club operates seven days a week. It is the centrepiece of an established international brand of over thirty years standing. That brand has been associated with significant allied businesses such as MoS Recordings, sold to Sony in 2016 (for an undisclosed sum, despite Mr Pitt's speculation that it was £50million) which recording business Mr Presencer regarded as part of the MoS "family". Southwark LBC and the Greater London Authority ("GLA") regard MoS as a prestigious, economically and culturally significant business as the operator of a club at the Property over and above the importance they attribute to the continued presence of *any* club as a user of the site in principle. There is no credible evidence that C's projected capital investment of up to £1million in 2026 is at risk, whether as a result of these proceedings or otherwise.

Factual Evidence of D1

23. Mr George Stanhope Pitt is a Chartered Accountant (now non-practising) and Director and Chairman of D1. D1 was established in 1890 to take over an existing bonded warehouse business in the London Docklands, the present iteration of the company being formed in 1907. The Pitt family has held shares in D1 from an early stage and Mr Pitt has been involved since the early 1970s; as a Director since about 1980 and as Chairman from 1983 since when D1 has mainly been concerned with managing a diverse portfolio of manufacturing and property investments including a portfolio of freehold and leasehold commercial properties in London and the South-East of England valued at over £28.8 million as at 31 December 2023.

24. D1 has had an interest in the Property since April 1988. The Property is a substantial site in a prime location in Southwark, five minutes' walk from rail and underground connections at Elephant & Castle. It sits between two main transport routes (Southwark Bridge Road and Newington Causeway) and is at the heart of the Elephant & Castle regeneration area. The Property is prime Central London development land within a regeneration-focused zone. It has not been developed for decades and is currently under-utilised, as it contains poor quality, low-rise buildings that do not make efficient use of the land nor reflect the demand for a variety of uses for high quality buildings in the regeneration area. MoS has been the tenant of the Property for over 30 years and, Mr Pitt says, in that time, D1 has enjoyed cordial relations with MoS (including supporting them through a restructuring in the early 1990s) and concluded multiple lease renewals.
25. Mr Pitt recognises, as do all the protagonists, that the key change that D1 seeks to the renewal lease is the inclusion of a rolling landlord redevelopment break on not less than nine months' written notice, exercisable to expire no earlier than 30 June 2028. He maintains that there is more than a real possibility of redevelopment of the Property because the prospect of developing the area of land that includes the Property has been discussed in detail with various stakeholders for almost a decade. He says that the local planning authority, Southwark LBC *"...has been involved and fully supportive of the development of the site. MoS has often been involved and has put together several of its own proposals for working with B&F or others to redevelop the Property. The history of this is important to show how the Property is clearly ready to be redeveloped and that both parties accept and acknowledge this fact..."*. He describes the *"Site Layout and Context"* (as it then was) in greater detail in his first witness statement dated 22 November 2024 from paragraph 23.
26. Mr Pitt describes development discussions and proposals for the area, latterly including the Property, in some detail. The following is only a summary.
- 26.1 Rolfe Judd (architects) were engaged in or about late 2014 to explore a variety of development options for land in the area in which D1 held interests, at this point in time not encompassing the Property and MoS. High-rise mixed development options were considered including commercial, residential and student accommodation.
- 26.2 These proposals were discussed with Southwark LBC, particularly in December 2015. Mr Pitt's impression was that Southwark LBC was encouraging and supportive and canvassed a hotel option and suggested discussions be considered with South Bank University with regard to student accommodation.
- 26.3 Extensive discussions with stakeholders including Southwark LBC about redevelopment of properties within the Quadrilateral site and in the area continued, to the extent that in April 2017 MoS itself was engaged with the prospect of a larger project including the Property and the possible provision of new, and potentially expanded, club facilities. Steve Platts (Southwark LBC) reportedly told Rolfe Judd in August 2017 that:

“The council is fully supportive of the redevelopment of this central site in the opportunity area”. He also noted that the Quadrilateral *“occupies a strategic location in the regeneration area and presents a key opportunity...”* to link any development with other regenerative opportunities in the area.

26.4 By early 2018 the Consortium had emerged. The Consortium appointed General Projects, led by Jacob Loftus, as development manager. Over the course of the following 18 months, General Projects worked with Morris and Co (who replaced Rolfe Judd as project architects) and specialist planning and other consultants to evaluate the Quadrilateral development potential. In September 2019, they produced a detailed feasibility study.

26.5 By 2021 proposals had matured into what became known as Phase 1 and Phase 2 (the Property being part of Phase 2) in which the prospect of MoS being accommodated in a new basement club space had become embedded.

26.6 In 2021 and 2022, careful to consider its investment returns, the Consortium considered selling its interests to a third-party developer and engaged CBRE to put the project out for expressions of interest. Considerable interest was shown by potential developers, but ultimately, in 2024, the Consortium was dissolved. There were concerns expressed by some Consortium participants that “agent of change” principles and acoustic issues associated with the provision of a new club space for MoS were proving too problematical.

26.7 Nonetheless, from 2017 MoS had actively participated in development proposals centred on the provision of a new basement club even extending to ideas involving the expansion of their services and facilities to incorporate a greater variety of leisure facilities.

26.8 Updating the property position in the Quadrilateral and generally, D1 and D3 now hold the freehold titles to the parcels of land numbered 1, 3, 4, 5 and 6 in *Figure 1*. The intention is for those interests to be developed in two phases which, unsurprisingly, have come to be known as Phase 1 and Phase 2.

26.9 A scheme for Phase 1 with a developer for the provision of student accommodation is well advanced at the pre-planning stage.

26.10 In his second and third witness statements Mr Pitt describes the recent consolidation of proprietary interests in the area.

27. Each of Mr Presencer and Mr Pitt honestly present the respective positions of the parties, albeit that each, at times, could stand accused of some subjective slant or “spin”. I got the impression that Mr Pitt was somewhat exasperated by what *he* perceived to be MoS’s recent intransigence and posturing about the lack of realistic redevelopment prospects. I found Mr Presencer over-played the matters he considered contributed to what he subjectively regarded as an existential threat to MoS. Both understandably made selective reference to endless emails passing between a variety of stakeholders over many years including Southwark LBC and the GLA.

28. Ms Amy Lamé, the one-time London night economy “Czar” with the GLA says this in correspondence dated 4 October 2024:

“Ministry of Sound is one of London’s most iconic night-time venues, hosting world class live shows and club events. It plays an important role in the lives of many Londoners and is a significant part of the cultural infrastructure and night-time cultural offer of South East London, the whole city, and the UK. The Mayor’s Cultural Infrastructure Plan and his Vision for London as a 24 Hour City make safeguarding and growing London’s night time cultural venues a priority. A key part of this work is to protect the capital’s music venues and nightclubs. As well as being intrinsic to London’s culture, they are also a vital economic driver. Music venues and clubs play an important role in many people’s lives, providing a place to meet and socialise and feel part of a community. These spaces are vital for nurturing talent and ensuring the future of London’s music industry. We would consider any development proposal that may lead to the loss of a live music venue unwelcome – whether this is a permanent or temporary loss during planning, demolition and construction. Continuity of business is critical for the success of nighttime spaces. We know from our work that when spaces close without an immediate and suitable replacement, they are often lost forever. We will be continuing to work with the operators, supporting them in obtaining a new long-term lease for the building, enabling this iconic venue to thrive for many years to come.”

29. Ms Lamé did not give evidence, but subject to some allowance for impactful hyperbole and the mix of fact and opinion, I consider this summary to encapsulate fairly MoS’s place in the market, its apparently favoured status as a club operator making significant contributions to London’s night-time culture and economy. Ms Lamé emphasises the fact that over the last twenty years the night-time economy has come to be considered much more important as an economic driver and as a social utility than had previously been the case.

The Planning Experts

30. The evidence of the Planning Experts was of importance. This was not only on the general question of whether planning permission was ever likely to be granted for any redevelopment including or involving the Property, but also on the extent to which any such possibility would be conditional upon the consent of MoS and/or the provision of “meanwhile” accommodation or alternative premises for MoS given the attitude of Southwark LBC and the GLA to the importance of the night time economy, the importance of a nightclub in that context, and the importance of MoS in particular as the operator of any club.
31. I had Reports and a Joint Statement and heard from Mr Tim Taylor BA MSc PgDI for C and Ms. Helen Cuthbert BSocSc (joint hon) MA FRTPI for D1. In brief, Mr Taylor is a solicitor specialising in planning with particular experience in matters

relevant to the area, the night-time economy, the Property and MoS. Ms Cuthbert is a “planner”.

32. Where they differ, I prefer and accept the opinion of Ms Cuthbert.
33. I found both in his Reports and his oral evidence Mr Taylor lacked a sufficient degree of independence from MoS to be reliable. He has worked closely with and represented C for many years. He is a member of the MoS “team” and promoted by Mr Presencer as such on Mr Taylor’s (Khift’s) website. Whilst his factual history of the Property and the area in the context of his extensive review of Southwark LBC, GLA and national planning policies is helpful, as were his insights into his previous engagements with public authorities as a trusted adviser for C, and his knowledge of the local economy (amongst other things) is impressive, Mr Taylor appeared to me to assume the role of Ms Shea KC’s Junior, advocating a particular cause and outcome. Mr Taylor’s knowledge and experience are formidable, but I found him, in this instance, to be worryingly lacking in measured independence. I found much of his evidence incongruent with what he agreed with Ms Cuthbert in the first paragraph of the Joint Statement, namely that redevelopment of the site could be possible if both parties used their best endeavours.
34. The fact that I prefer the evidence of Ms Cuthbert is not based on qualifications alone. I am inclined to think that as a “planner” she was in a stronger position to offer an opinion to the Court. However, the strength and reliability of her evidence stems from its measured conclusions. In brief, she recognises that there are many and various mountains to climb and obstacles to surmount before spades break ground. She accepts that some obstacles (e.g. “meanwhile” or continuity provision and acoustics) have not so far been successfully addressed and cannot yet be addressed until a project (whatever that be) is much further advanced. Far from simply reinforcing D1’s ambition regarding redevelopment, she addresses both positive and negative factors in an endeavour to assist the Court with the critical issue: whether there is a real possibility that the premises will be required for reconstruction during the continuance of the proposed new tenancy.
35. Mr Taylor’s opinion is that there is no real possibility that the premises will be required for reconstruction during the continuance of the proposed new tenancy. He bases his opinion on his fifteen years’ experience of the area, planning policies, planning practicalities, agency of change principles, acoustic mitigation, and problems with “meanwhile” or continuity provision for MoS. He says this:

“I have been actively involved in this unique and niche planning sector for the past 15 years. During that time, I have witnessed (and assisted) in the fundamental transition from ‘nightclub negative’ planning to ‘nightclub positive’ planning ...

It is only right to state that no planning lawyer, or competent planning professional, could ever say that a redevelopment of the Site cannot happen. It is not possible to prove a negative ...

However, rather than looking at the prospects of its redevelopment in terms of its possibility, a more realistic and sustainable professional assessment is to consider it in terms of its probability. In my unequivocal view, the probability of the Site being developed during the term of a new lease but without the full support of MoS is negligible. For the same reasons, the likelihood of a rational developer wishing to speculate significant sums on a planning application which does not have the support of MoS would be equally low ... [i.e. improbable].

In conclusion, far from there being “a real possibility of development” within the term of the new lease, my opinion is that the planning prospects for the Site’s redevelopment are negligible”. (My emphasis).

36. I do not find turning the applicable test on its head and reverse-engineering an opinion on a *real possibility* from the lack of *probability*, very helpful. However tempting it may be, a discussion of myriad nuances of what constitutes a real possibility as opposed to various gradations of probability, is equally unhelpful. There is no substitute for the application of the recognised test and Mr Taylor has not done this in my judgment.
37. Furthermore, “*without the full support of MoS*” seems to come perilously close to a tenant’s veto. Mr Taylor disavowed any such suggestion, but his disavowal reinforces my view of his assumption of the role of an advocate³. Even if what he says is suggestive of a tenant’s veto, then, if the full support of MoS is secured, redevelopment may be a real possibility, perhaps even more likely than not. If Mr Taylor’s evidence does not amount to a tenant’s veto, then securing the tenant’s cooperation may be preferable, but preferable surely in the context of real development possibilities. Why else attempt to secure MoS’s cooperation?
38. In short, I found Mr Taylor’s opinion to be illogical as well as lacking in independence.
39. Not so Ms Cuthbert’s. She provides an opinion to the following effect.
 - 39.1 The site is a typical urban development site which has the usual complex requirements for redevelopment. The physical, title and planning constraints are quite straightforward. The licensing position of a 24-hour Premises Licence is quite unusual but not unique. If designed from the outset, a replacement venue which has a 24-hour licence could be accommodated within the scheme design. There are two key areas of noise for a nightclub: venue noise and patron noise. The acoustic insulation could be designed in a new build scheme. Patron noise has already been assessed and addressed through a Deed of Easement in relation to Eileen House. There is no reason why this approach would be unacceptable in the case of this site.

³ Mr Taylor reinforces what MoS cooperation can achieve in his Addendum Report in the context of The Triangle and the Skipton House residential and student schemes as they have progressed in 2025 whilst recognising that these schemes are different to any scheme that might impact more directly on MoS within the Quadrilateral.

- 39.2 Any planning application would be assessed as to whether it would be consistent with policy and other material considerations. The continuity of C's operation may be a strong material consideration, but it does not override other policies. It is common in the planning world to have conflicting policy demands which the decision maker needs to weigh up when determining a planning application.
- 39.3 A desire by various stakeholders (including Southwark LBC and the GLA) to retain C as the specific operator of the club in any redevelopment may be a strong material consideration in the determination of any planning application, but it is not a policy requirement. If every effort has been made to secure C's place, but C's demands are unreasonable, Southwark LBC and/or the GLA could approve replacement club provision to be used by another operator in the interests of the greater development.
- 39.4 As a matter of planning policy, there is a requirement to protect and retain entertainment venues - but not a specific operator. C is a well-known global brand that could survive relocation to another location in London. The venue is a warehouse that was not designed as a nightclub but converted to one with acoustic insulation installed to address music noise. If C does not support scheme proposals, but the development incorporates equivalent or improved floorspace for a nightclub or potentially other leisure, arts, culture or community uses, it would comply with planning policy.
- 39.5 It is often the case that there is disruption of trade to businesses during construction works but this does not mean that the demands of an existing occupant (however unreasonable) would operate as a planning veto.
- 39.6 Although developer interest has not yet yielded a scheme thought likely to result in planning permission (no application yet having been submitted) the level of previous interest indicates that there is no reason to suppose that further interest would not be forthcoming during the continuance of a new lease.

Night-Time Economy & Mitigation

40. The Planning experts agree about the importance of the night-time economy to the area.

"The Experts agree, in broad terms, that the planning policy framework in relation to the night-time economy has evolved considerably over the past 20 years ..."

"The Experts agree that the introduction into national and regional policy of protections such as the agent of change and express policies supporting the retention of night-time uses have elevated the need for decision makers to accommodate night-time uses (including existing uses) and their socio-economic contribution to the local and wider areas. The agent of change principle is now set down in the NPPF and London Plan Policy D13".

41. The explanatory text to Policy D13 sums up its objective.

“Noise-generating cultural venues such as theatres, concert halls, pubs, nightclubs and other venues that host live or electronic music should be protected (see Policy HC5 Supporting London’s culture and creative industries). This requires a sensitive approach to managing change in the surrounding area. Adjacent development and land uses should be brought forward and designed in ways which ensure established cultural venues remain viable and can continue in their present form without the prospect of licensing restrictions or the threat of closure due to noise complaints from neighbours.”

42. The “agent of change” principle features much in the voluminous documentation. In outline it is a principle that requires stakeholders, decision makers and particularly developers to recognise the standing and importance of existing uses and to devise and implement schemes of development that mitigate and minimise the impact of existing uses on such development. A classic example would be where a scheme included residential development the occupants of which might subsequently complain about noise (or other) nuisance emanating from the existing use of a neighbouring property to the detriment of the existing use and, in this instance, the night-time economy.
43. The “agent of change” principle is to the effect that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established, and where a significant adverse impact on new development from existing businesses could occur, any planning applicant should be required to provide suitable mitigation before the development is completed.

Discussion of Planning Issues

44. “Eileen House” is an example of these principles in operation. Eileen House (now called “Two Fifty One”) is an example, not a precedent. This is on Gaunt Street opposite the main entrance to MoS but not part of the Quadrilateral. Its reconstruction, including high-rise residential units, did not involve moving MoS. Nonetheless, after much scrutiny by the Southwark LBC and the GLA, the redevelopment that was permitted in 2013 provided significant acoustic mitigation included in the design of the residential scheme. Design mitigations were fortified by what I will describe as a “tolerable current noise level easement”, the brainchild of Mr Taylor. The effect of this might be described by the proposition that one should not move to a “nuisance” and then complain about it. D1 relies on such an example to demonstrate that much is possible whilst protecting the interests of the existing use of a neighbouring property in balance with future residential occupants nearby.
45. Ms Cuthbert considers Eileen House to be a tolerable example of what might be achieved in this area with imaginative design and where all stakeholders cooperate despite the many differences she recognises between Eileen House and proposals

that will more directly impact on the Quadrilateral and MoS. Mr Taylor in his responsive Report disagrees, but, I find, unjustifiably elevates Ms Cuthbert's example of what can be achieved into something more, in an attempt to illustrate that the prospect of redevelopment even more closely impacting MoS has, at best, only a negligible chance of success. I found Mr Taylor's inability to accept Ms Cuthbert's example for what it was, obtuse. It was an example of how he allowed his objectivity to be compromised by his advocacy even though the many differences between Eileen House and the Quadrilateral are evident.

46. In 2014 Peabody Services Ltd ("Peabody") lodged an application for a redevelopment scheme for the Triangle. This included a relocated club for MoS as part of the scheme. The continuity of the club's operation was key to MoS's involvement in the proposals. The proposal included, amongst other things, a Noise and Nuisance Management Plan, an Entry Process Management Plan and a Dispersal Policy. However, in 2016, Peabody withdrew the application, stating that the scheme was no longer viable and that as a result of the acoustic testing which had been carried out, it was unclear whether the scheme could sufficiently mitigate the impact of vibration and noise from the proposed new MoS club on agent of change principles. No Peabody planning application was lodged. The Triangle was sold to the Berkeley Group in 2020. Discussions between stakeholders including Berkeley, Southwark LBC and the GLA, about the design and implementation of acoustic (and other) mitigations on agent of change principles continue.
47. C relies on this as demonstrating that despite years of discussions between Peabody (a "saga") as Mr Presencer has it), MoS and others, no acoustic solution could be found which enabled new club premises to be co-located within the proposed Triangle redevelopment scheme. D1 maintains that this is just another example of a potentially viable scheme being thwarted and does not mean that redevelopment of the Triangle or the Quadrilateral is unrealistic. The continued involvement of Berkeley, it is said, illustrates the real possibility of development in respect of the Triangle. D1 also questions whether the withdrawal of Peabody on acoustical grounds was anything more than a pretext.
48. It is not necessary for me to resolve disputes about Peabody's motivation.
49. C also relies on the dissolution of the Consortium particularly after having unsuccessfully explored the market without planning permission⁴. The activity over several years, far from suggesting that planning permission is realistic (an important factor in determining whether development is a real possibility), strongly suggests the contrary. It is said that there is no reason to suppose that repeated future efforts to devise an acceptable scheme will yield any different result.
50. In his Addendum Report Mr Taylor provides updated information about the Berkeley Homes development of the Triangle (permission granted for residential and student accommodation with acoustic conditions in June 2025) and the Skipton

⁴ The "CBRE" documents in the supplementary bundle from March 2023 refer.

House scheme about 100m east of Gaunt Street which remains under discussion. Each of these examples represents an inexact comparison with the Property. Neither is in the Quadrilateral, but each illustrates the limitations imposed on a developer or potential developer by “agent of change” principles in the context of noise mitigation⁵.

51. I am not persuaded that reliance on gobbets extracted from the voluminous email correspondence is decisive. I am not satisfied that such exchanges always clearly distinguish between the importance of the “user” of the Property in planning policy terms and the interests of the current occupant (MoS). The two seem to me to be often conflated. I hope it is not an unworthy thought, but my impression is that in the undergrowth of Southwark LBC and the GLA, MoS (as opposed to any club user) is regarded as a “*favourite child*”. So far as D1 is concerned, MoS is a “*problem child*”. The reality is that MoS is both.
52. I am satisfied that, at least at present, there is no planning or development solution with which MoS is likely to cooperate whilst a break clause is up for grabs.
53. C also relies on the “*long grass*” email.
54. On 25 August 2023, Adrian Horsburgh, a member of the Consortium, sent an email to George Pitt (D1) The email stated:

“They (Southwark LBC) are supportive of a Phase 1 and Phase 2 approach and are on board specifically for a Student led scheme on Phase 1 with the massing as portrayed as they do not think this has issues sitting alongside the MoS. The reason for this is the students are all short-term occupiers typically one year occupation in halls before moving out and can be moved within the building if there are particular issues. They do not view the MoS as overly relevant/an impediment to such a scheme on Phase 1 provided of course the developer is cognisant of the need to follow the ‘Agent of change’ principles ... They are aware of the issues of bringing any scheme forward on Phase 2 and do not envisage a deliverable planning permission on Phase 2 in either the short or medium term. They have mentally kicked Phase 2 into the long grass.” (My emphasis).

The reference to “Phase 2” incorporates that part of the Quadrilateral that includes the Property.

55. Leaving aside the assumptions about students and their accommodation in respect of Phase 1, their apparent place in the hierarchy of interests and the second-hand nature of the information, I do not regard this as anything more than an indication that Phase 2, as then configured, gave rise to issues yet to be resolved. Just how long the long grass is and what is intended by reference to the medium term are subjective and qualitative assessments made in the context of a particular project for Phase 2. I accept Ms Cuthbert’s professional assessment that this

⁵ The greatest noise impact for the Skipton House development proposals is from traffic.

correspondence indicates little more than that Phase 2 was not *then* regarded as a current priority.

56. The interests of MoS are of importance, but not decisive. It has, I infer, the economic, brand loyalty and political capital to continue to exert considerable influence over planning decisions, not least with regard to “agent of change” issues. I infer that MoS prefers to stay where it is, as it is. MoS is entitled to do so, so far as is consistent with legal principles.
57. I very much doubt that either Southwark LBC or the GLA would ultimately fail to see the important difference between the current occupant (MoS) and the “user” (by whosoever) of the Property in planning terms. MoS may justifiably be a preferred candidate⁶, but no public authority could fetter its decision-making on the basis that the current occupier (MoS) could be allowed to stand in the way of the regeneration of an important central London location.
58. In my judgment, the area in which MoS is situate (the Quadrilateral; the Elephant and Castle area) is, as everyone agrees, “ripe for development”. I conclude that there are no planning or policy reasons preventing redevelopment. Such problems as there are (and they are many), are transactional and pragmatic.

Competing Interests

59. So, both C and D1 rely on the planning history of the area captured in *Figure 1* over the last 15 years, but in opposite ways.
60. In summary, C maintains that despite many years of significant preparatory financial investment and the exhaustive investment of time and energy in the context of a number of imaginative mixed development schemes potentially affecting various clusters of property within the Quadrilateral and the Triangle, little or no progress has been made. This is particularly the case, it is said, with regard to the Quadrilateral and Phase 2. This, it is submitted, is the result of the complex tapestry of proprietary interests in the area, the planning policies that afford status to the use of the Property (whether by MoS or another occupant of the Property), the night-time economy, and the development problems that are derived from the implementation of the agent of change principle together with the need to provide continuity (“meanwhile” provision) for C’s operations during any redevelopment process. No viable planning application for the Quadrilateral or parts of it has ever been submitted. The cumulative effect of these various, major problems strongly indicates that it is “vanishingly unlikely” that the premises will be required for reconstruction during the continuance of the proposed new tenancy.
61. C further submits as follows.

⁶ Policy “P46” recognises the importance of internationally renowned cultural venues (which includes MoS) in Southwark. This recognises that MoS as a specific occupier is likely to wield considerable influence in respect of planning decisions going forward.

- 61.1 The history of the area shows that development is vanishingly unlikely. Considerable efforts of many interested parties have been invested over many years, since at least 2019, but no scheme involving the redevelopment of the Property has ever been brought to the planning authorities for approval.
- 61.2 The Property is not in a designated Development area in the Local Plan.
- 61.3 This failure is informed by the unique position of C in this location. It enjoys a distinctive status derived from C's position as a driver of the night-time economy. This status is underpinned by the development of the "agent of change" principle, whereby any development in the area, it is submitted, will be granted planning permission only on condition that C is granted in effect an easement of sound/noise which binds the newcomers, preventing them from bringing any action against C based on noise nuisance. There is no indication that planning authorities will ever come to regard C's occupation of the Property and its operations to be "expendable".
- 61.4 There is no real possibility that planning permission will be granted which compromises the ability of C to continue its current operation, whether that requires protecting its occupation the Property or providing suitable alternative accommodation either for the duration of any redevelopment with a move back to the Property following completion, or the creation of equivalent premises offering equivalent facilities and allowing C to maintain its business.
- 61.5 C's position is further underpinned by the fact that it has invested significant amounts of time and resources to exploring the development possibilities with a number of potential developers, such as Peabody and the Consortium. None of them have come to anything.
- 61.6 The prospect of finding any suitable alternative property into which to decant C's operation is itself no more than a remote possibility.
- 61.7 The inclusion of a redevelopment break clause will have an adverse effect on C's business: on the booking of artists, long term contracts with suppliers and security companies, and private events, as well as being of concern to potential investors.
- 61.8 There is no reason why D1's desire to keep its options open, and be able to sell to a developer (as to the existence of which there is simply no evidence), should prevail over C's desire to continue to conduct its business successfully, profitably, making a massive and unique contribution to the local economy, and sustaining its world famous brand with all the economic benefits that brings to the wider economy.
- 61.9 It would be unfair to impose a term which would compromise C's ability to run its business, and in effect require C to invest time, energy and money protecting its own position in any future potential redevelopment, when the prospects of such redevelopment are "vanishingly small".
- 61.10 The evidence shows that there is no real as opposed to fanciful or illusory prospect of the grant of planning permission for redevelopment of an area including the Property.
- 61.11 C further submits that even if the Court were to find as a fact that there is some small prospect of planning permission being granted, it would

nonetheless be wrong to impose the break clause on C. This is because of the prejudice to C caused by the mere existence of the break clause, quite independently of its exercise. This prejudice is more than sufficient to tip the scales of fairness in C's favour when applying the *O'May* test of essential fairness. The existence of a break clause is commercially prejudicial to C, which goes beyond the usual inherent prejudice caused by the risk of a business being forced to move elsewhere.

62. D1's case is that C's position is, at best, faint-hearted; at worst, obstructive. D1 accepts that there are significant challenges with the development or reconstruction of the site (including the Property) and does not seek to underplay the importance of all the problematic features affecting potential reconstruction identified by C. However, the residential development of Eileen House stands as an example (albeit not an exact comparable or precedent) of what can be achieved balancing the interests of all public and private stakeholders. The continuing discussions involving Berkeley for the Triangle demonstrate that solutions may feasibly be found or at the very least are worthy of serious consideration. The area (*Figure 1*) is "ripe for redevelopment". In planning terms, provision is likely to be required for a club, and whilst public authorities may justifiably prefer that to be operated by C given its iconic status, C does not have a veto on the granting of planning permission or reconstruction. "Meanwhile" or continuity provision for C cannot be sensibly addressed until a detailed scheme and timeline is proposed. D1 (or the group of which D1 is a member) has been consolidating the proprietary interests within the Quadrilateral. Despite the lack of success to date, the investment of time, energy and money over many years by various stakeholders (including MoS) demonstrably illustrates the potential for the reconstruction of the Quadrilateral (including Phase 2) and notwithstanding the many challenges there is a real possibility that the premises will be required for reconstruction during the continuance of the proposed new tenancy.
63. D1 further submits as follows.
- 63.1 There is demonstrably more than, or at least, a "real possibility" of development during the term of the proposed new lease (from 30.6.28).
- 63.2 The Property is undeveloped land in a prime central London borough in an area that is subject to substantial regeneration with excellent public transport provision.
- 63.3 The Quadrilateral has a number of relevant planning designations including being in the Elephant and Castle Opportunity Area, which point to an intensification of land use reflecting its central location.
- 63.4 The Property lies within the Tall Buildings Strategy Area and has been assessed capable of additional massing.
- 63.5 The Quadrilateral is surrounded by multiple consented and built out schemes including the Two Fifty-One (Eileen House) residential development on the opposite side of Gaunt Street (which obtained consent in 2014 and has been built) and Borough Triangle on the opposite side of the railway track

(Berkeley Homes securing planning consent on 17.6.25 for nearly 900 homes in two tower blocks (44 and 38 storeys respectively).

63.6 The continued brownfield state of the Quadrilateral is an anomaly. It is obvious that it is a prime candidate for development.

63.7 D1 has actively been exploring possible development options in respect of its holdings since 2014 (in respect of Phase 1) and 2017 (in respect of Phase 2) with the benefit of experienced property professionals.

63.8 There has been extensive engagement with the relevant local planning authority, Southwark LBC (“Southwark”), as well as the GLA, both of which have expressed themselves supportive of development of the Quadrilateral including the Property albeit subject to as yet unresolved qualifications.

63.9 There is a range of options available to achieve a successful redevelopment scheme on site, the most straightforward being commercial development with a replacement nightclub.

63.10 The marketing exercise run by CBRE for the Consortium in 2022 generated 14 expressions of interest and two bidding rounds with eight second round bids from a wide variety of developers. D1 has continued to receive approaches from interested parties since the dissolution of the Consortium.

63.11 C is well aware of the development potential of the Property and has itself undertaken substantial work to progress the design of a replacement nightclub in respect of a commercial development over the Property, including proposals that it might undertake development itself.

63.12 D1 has taken steps since the termination of the Consortium to acquire D2’s freehold interests (via D3) and to regulate the position regarding Lancaster House, putting it in a position where it can realistically progress a planning application for Phase 2 and has already entered into a conditional agreement in respect of Phase 1.

64. I accept D1’s case and Ms Lamont’s submissions in preference to those of C and Ms Shea KC on the redevelopment break.

65. D1 proposes the following reconstruction break clause.

“45.1 In the event of the Property or part thereof [or any means of access to it]⁷ being required for demolition or in connection with a scheme of rebuilding, [refurbishment]⁸ or reconstruction, the Landlord may determine this Lease by giving to the Tenant not less than nine months’ notice in writing specifying the intended termination date to the Tenant, such notice to expire no earlier than 30 June 2028.

45.2 Service of notice under section 25 of the 1954 Act is sufficient notice and good service for the purposes of clause 45.1.

45.3 All rights of determination of the term contained or referred to in this Lease shall be without prejudice to any antecedent rights and remedies of the parties hereto”.

⁷ See below.

⁸ Deleted before trial.

66. The response from C is limited to this. D1's redevelopment break clause as drafted will mean C's ability to operate its business from the Property will be *untenable* (my emphasis) as it offers too short a period of certainty and, in any event, it is drafted too widely.

Applicable Principles - Reconstruction

67. In National Car Parks Ltd v The Paternoster Consortium Ltd [1990] 15 EG 53, a case concerning the lease renewal of a car park under Paternoster Square, the Vice-Chancellor, Sir Nicholas Browne-Wilkinson, ordered a new tenancy with a landlord's redevelopment break option exercisable immediately from the start of the term on 6 months' notice. At 101-102 he said,

"There is no dispute as to the relevant law applicable. In cases where a landlord is unable to show that he is immediately in a position to effect a desired reconstruction of the land comprised in the tenancy, if there is a real possibility (as opposed to a probability) that the premises in question will be required for reconstruction during the continuance of the proposed new tenancy, it is right to include in the terms of the new tenancy a break clause which will enable such reconstruction to take place. It is not the policy lying behind Part II of the 1954 Act to permit the rights of the tenant under the new tenancy to stand in the way of reconstruction and redevelopment of commercial property ...

It therefore being a real possibility that the redevelopment can take place, it follows that a break clause ought to be included, unless there is some major factor pointing the other way."

68. Adams v Green (1978) 247 E.G. 49 concerned a tenancy of a confectioner and tobacconist. There were no existing plans to develop but the landlord was considering selling the shop along with others in a terrace. In the Court of Appeal Stamp LJ said at p.51 that "... it was no part of the policy – and I underline the word policy – of the 1954 Act to give security of tenure to a business tenant at the expense of preventing redevelopment." At p.52 he said that the Court had a wide discretion to direct the insertion of break clauses as are fair and proper in all the circumstances. He described the process as one of balancing the hardship for the parties of including or excluding the clause.
69. In JH Edwards & Sons Ltd v Central London Commercial Estates [1984] 2 E.G.L.R. 103 Fox LJ said: "*If it is likely that the superior landlord for the time being may wish to develop the property, then (since it is not the policy of the 1954 Act to inhibit development) he should not be saddled with a lease which may prevent such development. In that connection a present intention to redevelop immediately is not necessary... Accordingly, it seems to me that it must be wrong in principle, in the present case, to order the grant of new leases for such substantial periods as 12 and 10 years respectively without development "break" clauses. That has the effect of preventing development without the consent of the tenants during the period of the*

leases. I conclude therefore that the judge's decision was wrong and that the matter is at large before us. In considering what would be proper leases in the circumstances of this case I think that the predominant considerations are two. First, that so far as reasonable the lease should not prevent the superior landlord from using the premises for the purposes of development. Secondly, that a reasonable degree of security of tenure should be provided for the tenants. Those considerations are to some degree in conflict. The function of the court is to strike a reasonable balance between them in all the circumstances of the case."

70. In Davy's of London (Wine Merchants) Ltd v City of London Corporation [2004] 3 EGLR 39 Lewison J said that the Court must "*balance the redevelopment aspirations of the landlord against the business interests of the tenant; not allowing the latter to frustrate the former*". He drew a distinction between "*preventing*" the development on one hand, and "*delaying*" it on the other. He said that the function of the Court is to strike a fair balance between the two competing aspirations which "*necessarily presupposes that the landlord may have to wait some time (though not so long as to prevent redevelopment) before being able to regain possession*".
71. The principles have more recently been applied in B&M Retail Ltd v HSBC Bank Pension Trust (UK) Limited [2024] 2 P & CR 14 by Miles J. He summarised the authorities. I have gratefully relied on his summary. He said: "*the extensive case law ... shows that the Act is not to be used to prevent or unreasonably delay redevelopment and that a balancing exercise is required*".
72. I offer the following on the applicable principles to be applied.
 - 72.1 The landlord must prove that there is a real possibility that the premises will be required for reconstruction during the continuance of the proposed new tenancy. The test is objective.
 - 72.2 If a real possibility is proved, does the evidence reveal that there is some countervailing major factor or factors justifying a conclusion that, nonetheless, a development clause should *not* be ordered or is not justified. This engages an evaluative or balancing exercise that is inevitably fact sensitive. By way of example only, a dentist seeking a term of only 4½ years (after which he intends to retire) and who demonstrates significant financial and logistical prejudice were any development break to be included, might establish such a major factor or factors militating sufficiently strongly against a development clause. This evaluation involves balancing the landlord's interest in development and the tenant's interest in security. The older authorities refer to this as a "discretion". For ease of reference, I will call this the "*principle evaluation*".
 - 72.3 If there is no evident, countervailing major factor, focus shifts to evaluating or balancing the parties' competing interests in the context of the *content* of the development break. This "*content evaluation*" is designed to arrive at a fair and reasonable balance between the parties' competing interests with regard to what type of development break is to be considered. Sometimes, I venture to conclude, this process may yield what some would regard as the

least-worst option for those concerned. Such an evaluation is so multi-factorial in all the circumstances of the case that it would be unwise to attempt a list of potential factors.

72.4 Despite the foregoing, it is important not to adopt a too rigid approach. It is entirely possible that close scrutiny in the context of the content evaluation may cause the principle evaluation to be revisited in all the circumstances. The factors engaged in the balancing exercises are likely to be relevant to both.

72.5 The weight given to a single feature or cluster of features in a particular case will be different in each case even to the extent that in the fluid and continuous balancing process there may be cause to revisit whether there is any real possibility of reconstruction at all.

72.6 Neither the interests of the landlord nor the tenant “trump” the other.

72.7 Ultimately, the Court’s function is to strike as fair and reasonable a balance of competing interests as the circumstances allow.

73. To prove a real possibility of development D1 does not have to establish that development is imminent or that a specific scheme of reconstruction has been designed or devised. A real possibility is more than a fanciful, illusory or imaginary possibility. It follows from this that it is not necessary to demonstrate that planning permission will be or is likely to be granted for any particular scheme, or even in general terms. Finances do not need to be in place. D1 does not need to show that it has possession of the development site. The existence of one or more of these factors may help D1 establish that there is a real possibility that the premises will be required for reconstruction during the continuance of the proposed new tenancy and it has a genuine intention to avail itself of any such real possibility, but none is essential. Conversely, the absence of any of these factors might suggest that there is no real possibility of reconstruction at all, or that such major countervailing factors that may exist, prevail.

74. The Planning Experts in their Joint Statement agree that the site has the potential for redevelopment and that “*a redevelopment of the site could be achieved if the parties use their best endeavours*”. I regard this as important common ground. Mr Presencer himself said in his oral evidence that if someone came along with a sensible proposal, he would probably take it.

Break Clause Conclusions

75. I am satisfied that D1 has proved that there is a real possibility that the Property will be required for reconstruction during the continuance of the proposed new tenancy despite the many and even formidable challenges that lie ahead.

76. I accept that provision for a redevelopment break clause will add to C’s and Mr Presencer’s administrative burdens to some extent, particularly in the context of contractual and regulatory arrangements for licensing, “meanwhile” or continuity accommodation, sponsors, artists and suppliers. Managerial time, effort and money is likely to be invested in monitoring and even participating in the planning and

development future of the area, but I reject the suggestion that any of this represents an existential threat to MoS (with or without the provision of “meanwhile” or continuity business accommodation) or renders C’s business untenable or is potentially so destabilising as to represent a factor that should be allowed to stifle any proven real possibility of future development.

77. I am satisfied that D1 has demonstrated that there is no major factor or factors such as to suggest that notwithstanding the “real possibility” the Court should nonetheless, in the exercise of a discretion or evaluation, refrain from approving a redevelopment break option. I conclude that C’s evidence (that of Mr Presencer and Mr Taylor) about the prejudicial impact of a break clause (effectively the “*Sword of Damocles*”) on the operational activities and finances of MoS is misplaced in principle, exaggerated on the facts and not supported by any detailed financial documentation.

77.1 It is misplaced in principle because any protected commercial tenant is necessarily going to face difficult commercial and operational decisions as a lease nears its term, centred on the prospects of whether a new lease is likely to be granted and if so on what terms, whether in the context of reconstruction, occupation by a landlord for his own business purposes, rent hikes or otherwise. Any such commercial tenant is bound to have to account for these risks in making contractual arrangements with suppliers, sponsors and performers. These are the ordinary vicissitudes of business and are not, at least not in this case, factors of sufficient weight to warrant a refusal to give effect to the “real possibility” of reconstruction.

77.2 On the facts, Mr Presencer attempts to face both ways. With justification he emphasises the iconic and economically driving status of MoS. He deploys this status in planning and political terms. There is no reason why he should not in order to secure the best result he can for MoS. I do not regard this as a negative feature of his evidence. However, (and here I am paraphrasing) facing the other way, he maintains that MoS is likely to be so commercially enfeebled by a break clause in respect of its contractual dealings with suppliers, sponsors, clients and performers, as to be irredeemably prejudiced when faced with a reconstruction break clause. I do not accept this. MoS is a market leader. It has, I find, enormous commercial leverage. It is the “buyer” in a buyer’s market. I am satisfied that with or without “meanwhile” or continuity provision so far in sight, MoS brand is likely to survive and thrive, on site or elsewhere and will continue to enjoy considerable planning leverage and influence as further potential projects are advanced.

77.3 It is also of significance to note that any triggering of a break clause by D1 would only be the start of a longer (and potentially contentious) process. C would enjoy the protection of the Act. D1 would have to serve an opposed section 25 notice and prove any proposed redevelopment under s.30(1) of the Act, ground (f), in order to terminate the renewal lease.

77.4 A refusal to sanction a break clause would, in my judgment, create a significant commercial imbalance between C and D1 in this case. It would

afford unjustified primacy to considerations affecting the particular tenant at the expense of the landlord and the site and fail fairly to recognise the balance of competing commercial interests that is required.

77.5 Absent a redevelopment break clause, any possibility of development would be stifled or very limited and/or subject to the approval of C. In other words, C would have a veto placing C in a position of unjustified commercial and financial advantage.

77.6 Continuity provision, acoustic (etc.) mitigation and the implementation of agency of change principles with C as a favoured occupant still present evident challenges but they are not insurmountable.

78. The *content* of any break clause has not featured much in the evidence or submissions. D1 has submitted a viable and balanced proposal. There is no specific counterproposal. C's position has been very much "all or nothing", save to the extent that it is submitted that the period of security of tenure is too short, and the clause drafted too widely. I do not accept these broadly based objections in the absence of properly calibrated alternatives to D1's draft.

79. I am satisfied that D1's proposal as set out above⁹ is fair and reasonable and proportionately balances the competing commercial interests of the parties.

Other Terms

80. A number of amendments applicable to the renewal lease have been proposed by C but remain unresolved and in dispute. These remaining issues are identified in the Schedule of Disputed Terms (Renewal Lease Terms to be Decided by the Court 19 September 2025 – "the Schedule") and in the Further Additional Terms Proposed by the Tenant ("FAT").

81. The remaining twenty-two terms in dispute in the Schedule and FAT need to be determined by the Court pursuant to s.35 of the Act. The leading authority on the operation of s.35 is O'May v City of London Real Property Co Ltd [1983] AC 726. The House of Lords held that the Court must begin by considering the terms of the current tenancy and that the burden of persuading the court to impose a change that is opposed by either party must rest on the party proposing the change showing good reason and supported by cogent evidence. The change proposed must, in the circumstances of the case, be fair and reasonable. If the terms of the current lease are obsolete or deficient the Court may consider this an adequate reason for change. The overriding question is whether the proposed change can be justified on grounds of "essential fairness" between landlord and tenant.

82. So far as the FAT are concerned, save in respect of the Permitted User (item 3) and Notices (item 9) which are agreed (albeit as late suggested modifications by C), like most of the items in the Schedule they appear to me to be attempts by C to

⁹ Paragraph 65.

renegotiate and I am not persuaded that C has demonstrated that the changes are supported by good reason. Indeed, whilst a limited number of individual terms in the FAT and the Schedule have been canvassed in the factual witness statements, the disputed terms¹⁰ occupied us hardly at all during the trial¹¹.

83. I have dealt with the redevelopment break clause above and will return to the Rent in due course. It is accepted that the resolution of these drafting issues (apart from the redevelopment break) does not materially affect the Rent.
84. Two potentially contentious proposed adjustments seem to have fallen away. They do not appear in the Schedule. The first concerns rent reviews. C proposed rent reviews on the 5th and 10th anniversaries of the term, on an open market upwards and downwards basis and sought to amend the rent review assumptions to simplify them. D1 proposed rent reviews on the 5th and 10th anniversaries of the term, on an open market upwards only basis, which is the basis of the rent review in the current lease but sought to make one amendment to the rent review assumptions.
85. At the hearing I took it to have been accepted by C that rent reviews should be upwards only. I would have so ordered.
86. Secondly, C had at some stage proposed the removal of any need for its parent company, Ministry of Sound Group Ltd, to provide a guarantee. This change is no longer pursued. I would not have approved it in any event.
87. The numerical subparagraphs below represent and reflect the paragraph numbers in the Schedule. Save to the limited extent set out below or otherwise agreed between the parties I do not approve any of C's proposed changes. The terms of the Lease are not otherwise obsolete nor deficient (subject to paragraph 88 below), neither does it seem that they are ripe for modernisation, clarification or demand adjustment in the interests of fairness or reasonableness.
 - 87.1 The Rent (see further below).
 - 87.2 The "Dancebox".

C seeks removal of the "Dancebox" as a separate element of the Property hitherto valued distinctly at an uplifted rate. C maintains that the area is historic and increasingly of little utility. Nonetheless, the distinctiveness of this area has been recognised and valued separately by the parties and I am not satisfied that there is any sufficient basis to change this.
 - 87.3 Redevelopment Break (see above).
 - 87.4 Tenant's Break (Licensing).

¹⁰ Other than Rent and the Break Clause.

¹¹ The parties' respective contentions being set out in the Schedule and FAT themselves.

The existing licensing break clause fairly balances the risks attendant on some no-fault revocation affecting C. To adjust this as C suggests would affect a previously agreed balance. No change is justified.

- 87.5 Tenant's Break (Arches).
This relates to Network Rail Arches 82 & 83. The existing previously negotiated break clause adequately reflects a fair balance between the parties and does not call for modernisation, updating or clarification.
- 87.6 Tenant's Break (Fire escape routes).
There is no justification for watering down this obligation
- 87.7 Tenant's Break (Arch 77).
This reflects C's attempt to renegotiate. The position on the ground remains unchanged since 2011 (and many years before). There is no justification for any alteration.
- 87.8 Roof works.
The dispute here centres on historic roof works which at present D1 is not satisfied have been proved to have been done or done to the required standard. It is inappropriate to reconfigure the drafting of the lease to circumvent such issues as remain in this context.
- 87.9 Quiet Enjoyment.
The Schedule is ambiguous about what is agreed here. However, given the changing and fluid proprietary interests in the vicinity and D1 and D3's consolidation of proprietary interests, I consider that essential fairness between the parties yields the following.
Subject to the Tenant paying the Rents and complying with its obligations in this Lease the Tenant will have quiet enjoyment of the Property without interruption by the Landlord or any person claiming under rights granted by the Landlord or claiming under or in trust for the Landlord.
- 87.10 Fire escape maintenance.
I accept D1's contention that it is sufficient that the costs are properly incurred for the relevant fire escape purposes and no further amendment is necessary or justified. C has been content with this (without the further "reasonable" qualification) for years.
- 87.11 Repairing Liability Limitation.
C does not wish "to shirk" its statutory obligations, in which case there is no justification for adding this new provision. C's attempt is merely an attempt at renegotiation.
- 87.12 Alterations.

C's proposed amendment is simply an attempt at renegotiation and is not necessary, neither does it reflect a fair balance between the parties.

87.13 Permitted Use.

The proposed new Proviso is unnecessary and alters the balance of the existing relationship between the parties.

87.14 Minimum Energy Efficiency Standards.

There is no reason to impose the ultimate responsibility for energy efficiency standards compliance on the landlord. Frankly, I do not believe that C seriously thinks that there is a justification for doing so. Statutory regulation may well impose a duty on the landlord to ensure compliance with updated energy efficiency requirements, but this does not and should not alter the obligations as between the parties to the lease.

87.15 Reinstatement.

I am satisfied that given the inclusion of a development break the following provision should also be made in order to strike a fair balance between the parties:

PROVIDED ALWAYS THAT the Tenant shall not be obliged to comply with the provisions of clauses 20.1.2, 20.1.3, 20.2.2 and 20.2.3 in the event that the Lease is terminated following (i) the exercise by the Landlord of the Landlord redevelopment break in clause [X]; or (ii) successful opposition by the Landlord of the renewal of the Lease on the basis of section 30(1)(f) of the 1954 Act.

87.16 Adjoining Property.

This a new proposal from C and is an attempt to renegotiate the parties' existing positions.

87.17 Light & Easements.

D1 is entitled to retain to itself these rights. C's proposed new clause is merely an attempt at renegotiation, and an adjustment to the respective rights of the parties.

87.18 Landlord's Reservations.

C seeks to delete this reservation. There is nothing unusual about it. It does not require modernisation. C seeks to readjust the commercial positions of the parties.

87.19 Adjoining Property Reservations.

C seeks to delete this earlier agreed (2011) reservation. No cogent reasons are advanced for doing so.

87.20 Easements.

C seeks to delete this clause. There is no reason to do so. Deletion is not modernisation nor is it necessary for clarification. As things stand matters reflect what the parties have previously agreed.

87.21 Scaffolding.

C proposes a new clause. I can see no justification for this. It is an attempt to strengthen C's position that is not warranted in circumstances where existing arrangements have worked for over thirty years without any adverse impact.

87.22 Landlord's Reservation.

This reservation was negotiated between the parties in 2011 as part of a larger, informed overall agreement. There is no cogent reason to interfere with it now.

88. D1 seeks to make one adjustment to the rent review mechanism namely, to delete the definition of "*Comparable Offices*". The existing definition refers to specific streets in Southwark as rental comparables for offices. I accept Mr Pitt's evidence that this is now obsolete due to the significant regeneration that has taken place in the Southwark area since the Lease was granted in 2011. The Comparable Offices definition is used only in one rent review assumption in respect of the rental value of the part used by MoS as offices and given the changed nature of the local area, including widescale change of use from offices to residential and other non-commercial uses in the streets specified in the current definition, limiting the comparables to those specific streets is no longer appropriate. Rental valuers now need to be able to refer to other locations considered relevant to valuation at the relevant rent review date. Deleting the Comparable Offices definition is reasonable modernisation and is fair to both parties, as it would allow either party's rent review valuer to select comparables they consider appropriate without unrealistic and outdated restriction.
89. Save to the extent that D1 has agreed, I see no justification for making any of the adjustments proposed by C in FAT.

Rent

90. I heard evidence from valuation Experts. C's expert, Philippa Gee-Merrett BSc (Hons) MRICS ("PGM") now says that the s.34 rent should be £108,350 pa with the redevelopment break. D1's expert, Jonathan Stott MRICS ("JS") concludes that it is £605,353 pa with the redevelopment break.
91. Section 34 of the Act provides (as relevant);

(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.

.....

(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.

92. Most of the evidence at trial focused on the impact of any redevelopment clause despite the detailed consideration by the valuation Experts on various aspects of the Property.
93. The determination by the Court of rent under s.34 of the Act is a matter of valuation; not discretion, negotiation or compromise. What I have undertaken in *Figure 6* (below) is a valuation in the light of my conclusions about the valuation Experts' and factual evidence. It is not an attempted compromise nor the deployment of judicial discretion. The valuation date is the date of the commencement of the new tenancy which will be on the termination of the current tenancy under s.64 of the Act (3 months from the final determination of the proceedings). Under s.34(1) the rent is that as 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 tenant's fixtures and fittings or tenant's improvements falling within s.34(2).

94. My conclusions are set out in *Figure 6* below¹².

Figure 6.

TABLE OF VALUATION

VALUATION ISSUE	D1 REPORT	C ADDENDUM/UPDATED REPORT	CONCLUSION
Ground Floor Club	£35.00 psf	£17.00 psf	£30.00 psf 7,009 £210,270.00
Uplifted Rate for Dance Box	£40.25 psf (+15%)	£19.13 psf (+12.5%)	£34.50 psf (+15%) 4,332 £149,454.00
Ground Floor Offices	£25.56 psf	£8.75 psf	£17.00 psf 5,483 £93,211.00
Mezzanine: VIP, Loft & Balcony	£17.50 (50% of headline rate)	£17.00 psf.	£17.00 psf 3,475 £59,075.00
Mezzanine Offices	[Not valued on assumption at the time this was a tenant improvement to be disregarded] <i>JS position revised at trial to align with PGM on measurement & inclusion but at £12.78 psf. (half GF rate).</i>	£8.75 psf	£8.75 psf 1,813 £15,863.75
Total (Internal)			22,112 sq ft.
Forecourt	£8.75 psf (25% of main club rate)	£2.55 psf (15% of main club rate)	£7.50 psf at 25%. 3,545 £26,587.50
Adjustment for Arch Co ability to terminate LL's long lease of Arch 77 which is used for fire access	No adjustment	-5% (£16,467)	No separate adjustment.
Tenant's Breaks (Licensing/Network rail)			No separate adjustment.

¹² The measurements adopted in the "Conclusion" column are taken from the Addendum Joint Statement of the valuation Experts and as subsequently agreed (Supp. Bundle 760-762).

Deduction for Water Tank	N/A	£10,093 (£151,400 over 15 years)	No separate adjustment.
Adjustment in respect of Capacity (single fire exit)	N/A	Deducts £86,073 pa for cost of securing additional fire exit	(accounted for in headline rate)
Running Total			£554,461.25
Impact Landlord's Redevelopment Break Clause	-15% (for a break operable from 2028)	-50% for a break operable from 2028	26% for landlord's redevelopment break.
s.34 Rent with LL Break Clause from 30 June 2028	[Originally: £605,253 pa] <i>Adjusted at trial to £607,300 to account for inclusion of mezzanine Offices,</i>	£108,350 pa	£410,301.33

95. The adjustments in italics in D1's column in *Figure 6* arise from post-trial written submissions I received by email from Ms Lamont on 20 October 2025 and a reply from Ms Shea KC. These adjustments were due to agreement reached on the inclusion of Mezzanine offices and the total square footage (and the consequences of such agreement) immediately before the trial and were reflected in a revised Appendix submitted electronically the day before the valuation Experts gave oral evidence.
96. Ms Lamont submits that, whilst the difference is comparatively small, these adjustments should yield an increased s. 34 rent total (I calculate, in round figures, £7,250), not least of all to achieve consistency with the approach taken to the Ground Floor offices on JS's figures. Ms Shea KC submits that the adjustments were not properly evidenced, or alternatively, consistency with Ground Floor offices would indicate adopting a rate that is ½ that which I adopted in *Figure 6* for Ground Floor Offices. This would result in a *reduction* of £0.25 psf (about £450) in the Mezzanine Office column.
97. It has taken me a little time to unravel all this, the process being all the more difficult because there is force in each of Counsels' submissions. I am not critical because, as it seems to me, it is inevitable and important that the parties should continue to adjust their positions and attempt to reach such agreements as they can on a continuing basis. This can sometimes seem hurried and can lead to a proliferation of amended documents and consequential misunderstandings.
98. In the end I am satisfied that the conclusions reached in *Figure 6* reflect reasonable and appropriate conclusions about the total s.34 rent. Ultimately, I accept the submissions of Ms Shea KC on the arithmetic (but not on evidential provenance), but I do not consider it necessary to revise the figures based on a potential 25p reduction.

99. Each valuation Expert adopted the comparables methodology. Each recognised the problem of identifying convincing comparables in the market of nightclubs, particularly given the particular attributes of MoS. Unsurprisingly, the comparables relied on were not wholly comparable in every respect.
100. The first Joint Statement¹³ of the valuation Experts tabulates the comparables and the large number of issues on which they disagree. These were explored in cross-examination. Features of disagreement included matters such as location, whether a club was a destination venue or part of a licensed “leisure pitch”, configuration, licensing, operating constraints, utility of ancillary spaces, transport links and capacity. There was much discussion about the extent to which the Property was inferior or superior to others in these respects as well as the impact of both landlords’ and tenants’ break clauses and manner in which comparable rents had been arrived at, when and in what prevailing social conditions. The disagreements remain diverse and radical.
101. I did not consider JS’s schedule of *retail* break clauses of any assistance.
102. It is disappointing that in a range of £100K to £600K the experts are half a million pounds apart. They cannot both be right, but both may be wrong.
103. JS faced challenges on the basis that his evidence at times strayed into personal anecdote, was based (it was said) on experience largely in retail and his use of a concentric circle range centred on Leicester Square which included properties he accepted were not reliable comparators, but outlying “framers”. His enthusiasm for night buses was also subject to challenge.
104. PGM was challenged on the basis that having represented C for twenty years she, at every turn, by way of a “manifesto” designed to suppress the Rent, made deductions favourable to C in order to justify the conclusion that C should be paying markedly less than hitherto (despite the 50% allowance for the redevelopment break) and in certain respects her assessments involve double counting.
105. In each case the criticisms were justified, at least up to a point. I will have to do the best I can based on an amalgam of their evidence. This no doubt partly explains why judicial decisions with regard to rent rank so low in the hierarchy of precedents. However, I am not persuaded that the catalogue of criticisms levelled at each valuation Expert justifies the wholesale rejection of the evidence of either of them, although in my judgment both have erred towards calculations and figures at the extreme boundaries of what is at stake on each of the many remaining issues. As a result, I found neither valuation Expert wholly persuasive on any of the issues any more than I found any of the comparables decisive¹⁴.

¹³ Floor areas have since been agreed and are the basis of the conclusions in *Figure 6*.

¹⁴ I did not find Lio, Rex Rooms or Circa contextually very helpful. Fire & Lightbox, Clapham Grand & Scala, more so, but even then, they have to be treated cautiously due to the myriad differences and variable circumstances in which rental values have been arrived at.

106. A classic example of their extreme positions is illustrated by their approach to the ground floor office space. JS values this in accordance with the recent letting of offices at neighbouring Lancaster House. PGM considers the office space to be of much more limited value to a hypothetical tenant due to the fact that few, if any, would benefit from the need of such extensive administrative space. I consider it more likely that the hypothetical tenant would evaluate this space in line with other ancillary areas which is why I have adopted £17.00 psf in *Figure 6*.
107. There is a “Table of Valuation Differences” taking account of the experts’ Reports and the agreed measurement updates from the valuation Experts’ second Joint Statement on which I have based *Figure 6*.

The Fire Strategy Report & Capacity

108. PGM makes reference to and annexes to her Report a Fire Strategy Report [“FSR”] (Lam: 9.04.25). The potential importance of this is that on one view of the material in the FSR, the capacity of the club is reduced to 381 persons in the event that certain fire escapes are not available to a tenant. *Figure 7* illustrates as much without access to Female WCs, Bar and Baby Box fire exits. This would exert significant downwards pressure on the Rent it is said.

Figure 7.

Exit	Exit Width (mm)	Capacity (persons)
1F		
GF		
Back of Stage + Box	1330	381
Main Entrance	2 x 1490 (2980)	855
Total		381

109. D1 submits that reliance on this is an attempt to admit expert evidence “*through the back door*” for which there is no permission and no realistic opportunity to challenge. Reference is made to the Judgment of Christopher Clarke LJ in *Hoyle v Rogers* [2014] EWCA Civ 257. This is a rabbit hole down which I am not anxious to burrow. As it seems to me the FSR is not expert evidence. It is a background document containing a mix of basic facts and some opinions. On this PGM herself seeks to draw certain conclusions and offer expert opinion in the context of her own status and expertise as an expert witness. She is supposed to reference material on which she has relied. She has done so. The rest is *weight*. Assessing weight is engaged in approaching both PGM’s report itself and the information on which she has relied.
110. I was not invited to embark on a close scrutiny of the FSR to extract basic facts from opinions. The exercise would be disproportionate and further, detailed submissions would be required. I am prepared to take the FSR into account insofar

as it represents the foundation of some of PGM’s expert evidence and subject to an assessment of its weight in all the circumstances.

111. PGM makes the point that capacity issues, in this case informed by questions regarding the fire escapes not included in the lease, are bound to influence the Rent, exerting downwards (even significant downwards) pressure. Some reliance was placed on examples such as “Studio 388” and “Little Violet”¹⁵ where an 18% and 16.6% reduction in capacity seems to have, at least partly, informed a 21.7% and 7.7% reduction in rent respectively. I took these to be illustrative of the practicalities rather than precedents. JS was unable to see any clear correlation at all. His opinion was that a hypothetical tenant would face myriad fitting-out and other configuration issues and would not necessarily seek to replicate the current use whilst needing to devise a fire strategy of their own and, if necessary, pay to enhance the fire escape facilities. JS (as the Joint Statement indicates) does not consider that capacity or fire escape issues affect marketability or rental value.
112. After considerable discussion, PGM takes account of what she identifies as fire escape and capacity issues and concludes that the open market headline rate (without a redevelopment break) would look like that illustrated in *Figure 8*.

Figure 8.

Open Market Headline Rent	£315,450
Less	
4 months’ rent free (3 m to secure L/Id consent re Arches & 1 m to reflect risk & legal costs amortised over 15 years)	-£7,010
Amortised cost of premium paid to existing T of Arches 82/83.6 m rent (£21,675) over 15 years	-£1,445
Annual Cost of occupying Arches 82/83	-£65,400
Annual cost of a Licence via 64-66 Newington Causeway (coloured purple)	£12,500
	£229,095
But Say	£229,000

113. I conclude that JS’s approach to fire escape issues underplays¹⁶ what I consider to be the inevitable issues about capacity that the complex escape facilities associated with the Property as currently operated reveal. Whilst I doubt that the literal and arithmetical approach adopted by PGM is likely to be determinative and is overplayed, I do not accept that the hypothetical tenant would be insensible to or be likely to disregard the potential economic consequences of the fire escape issues given the potential impact on capacity. I have made allowance for this feature of the dispute in the headline rate.

¹⁵ In terms of capacity.

¹⁶ In his oral evidence JS emphasised that a hypothetical tenant would not necessarily seek to replicate the way in the Property is currently used and in the light of that would no doubt reconfigure the fire strategy as part of the fitting out costs. He is likely to be right about this, but the point does not circumvent the inevitable issues that will be evident about fire escapes and capacity to a hypothetical tenant.

114. Accordingly, I consider JS's headline rate of £35.00 psf to be unrealistically high and that some allowance needs to be made for problems likely to arise with the provision of secure fire escape facilities for a hypothetical tenant.
115. In my judgment, taking account of the competing contentions of the parties, including the water tank¹⁷, various competing arguments about ground and upper floor office space, and the tenant's break¹⁸, a headline rate of £30.00 psf is appropriate. This will have an impact on weighted valuations as accounted for in Figure 6 (above).

Tenant's Break

116. The valuation Experts do not agree about this either save to the extent that it would be very much a last resort.
117. JS concludes¹⁹:

"In the New Lease the tenant has the option to break its lease at any time if it loses its Premises Licence (and also relating to Network Rail operational breaks). None of the nightclub operators in the comparable properties enjoy this benefit... [the causative] incidents are ... operational and within the control of the tenant rather ... it is the tenant who operates the nightclub. So having a tenant option to break for an issue which is essentially within the tenant's control strikes me as being a unique benefit to the hypothetical tenant in this case.

... exercising such a break would be something of a last resort if the premises licence appeared to be incapable of recovery (an operator would likely absorb a temporary closure); the tenant would lose its fit out investment (although most of the expensive lighting and sound system equipment could be redeployed elsewhere). Nonetheless an addition is warranted in the valuation. I have no evidence for this as it is not a scenario I have come across before ...

I have made an addition of 5% in my valuation of that circumstance. This is different but not wholly dissimilar: the premises licence break in the New Lease applies from day 1 which is better and more flexible than a break after 5 years. However, the nature of the premises licence break is much more limited and specific. I think it is reasonable that these 2 considerations neutralise each other so I have made the same 5% addition in the Subject Valuation as I did in the Fire devaluation..."

118. PGM says²⁰:

"The percentage Uplift in rent to reflect the Tenant's ability to terminate the lease is unwarranted and illogical, with no basis in fact. The Tenant is only able to terminate the lease if they are facing a catastrophic loss of their business through

¹⁷ There must have been a water tank *in situ* as early as 1991 under previous occupancy.

¹⁸ Licence revocation break operative only in extreme circumstances but of value.

¹⁹ JS Report 6.25-6.26.

²⁰ PGM Report 3.5.8.

no fault of their own, and only after they have made considerable efforts to reinstate their Premises Licence or find alternative means of escape. It is difficult to see how the ability to terminate the lease in this circumstance can be considered a benefit at all. Accordingly, I do not consider it appropriate to make any adjustment to the open market rent”.

119. Whilst I am satisfied that such a break is likely to have some (albeit limited) value to a hypothetical tenant, in my judgment, PGM’s opinion that the exercise of such rights would be very heavily constrained also has force. This suggests that JS’s approach is unduly regimented, arithmetical and speculative. In the absence of agreement between the valuation Experts I prefer to accommodate the valuation Experts’ opinions in this context in the overall rate psf as I have implied in paragraph 111 above in the same way as I have accommodated fire escape issues. JS opines that the two features (Tenant’s break and fire escapes cancel each other out). PGM’s approach is different in substance and approach. A hypothetical tenant is likely to consider all these matters in the round which is why I have not made any separate adjustment.

Development Break Discount

120. The valuation Experts agree there should be a significant discount from the headline rate to account for the rolling redevelopment break; that the comparables are few and inevitably inexact. PGM puts the discount as high as 50%. This has not been adjusted since D1 modified the earliest trigger date from June 2026 to June 2028 and extended the minimum guaranteed term in accordance with its current proposal and my decision. Her opinion is that the uncertainty in principle for the hypothetical tenant facing what is on either scenario a short, guaranteed term is the essential factor, and the precise date is comparatively insignificant. I don’t accept this evidence. 50% is too great an allowance in any event. PGM has not encountered 50% previously in any comparable. Furthermore, whilst the hypothetical tenant would have only a short, guaranteed term I consider it likely that a difference between a bare minimum of one year (as originally offered) and at least 27 months (in the now approved break option) would make a material difference.

121. PGM’s up to date opinion is captured in *Figure 9*.

Figure 9.

Open Market Headline Rent	£315,450
Less	
Annual costs associated with the hypothetical tenant’s need to secure and provide additional fire escapes (see paragraph 5.6.5)	<u>-£86,355</u>
Open Market Rent Adjusted Rent	£229,095
Less	
50% discount for rolling landlord’s break clause	<u>-£114,548</u>
Total	£114,548
But Say	£114,500

122. JS maintains that an appropriate discount would be 15%. JS relies particularly on “Garage” at Highbury Corner (a day one rolling break) in this context. Having attempted to disentangle various factors contributing to the 30% agreed in that instance, he arrives at a figure of 23%. He then applies a further discount to account, amongst other things, for the longer guaranteed term in respect of MoS, arriving at 15%.
123. In my judgment JS goes too far. A hypothetical tenant would attribute greater importance to the various uncertainties ventilated by PGM. 26% is the appropriate rolling break discount in my judgment after taking into account the distinctive comparables and the innumerable disputes between the valuation Experts.

Directions

124. A Judgment was circulated in draft pursuant CPR PD 40E on 20 October 2025.
- 124.1 I received timely editorial corrections.
- 124.2 I have adjusted the draft Judgment to accommodate many of the suggested editorial corrections.
- 124.3 I have also adjusted the draft Judgment to accommodate the post-trial email submissions about the Mezzanine offices, which submissions make no difference to the outcome.
- 124.4 I have received written costs submissions from Ms Lamont.
- 124.5 I have also received an electronic costs bundle.
- 124.6 A draft Order has also been produced but (as to costs) this is not agreed.
125. Subject to costs, there is no difficulty with the proposed draft Order. I attach a revised Order.
126. Ms Lamont proposes that I deal with costs by further submissions and responsive submissions in writing. I am unclear what Ms Shea KC proposes in this regard.
127. There will have to be a costs hearing. This itself is likely to carry costs consequences. I have accommodated this in the Order circulated with this Judgment.
128. Tempting as Ms Lamont’s submissions to take costs submissions in writing are, there are potential problems with that.
- 128.1 It is not obvious to me that C agrees.
- 128.2 Even if there was agreement, no time is allocated for such a process.
129. This Judgment is deemed handed down electronically effective at 10.30am on 5 November 2025 together with the Order circulated. No doubt the Schedules referred to can be supplied.

Judgment Ends
5 November 2025

Alan Saggerson



His Honour Judge Saggerson, Circuit Judge, **County Court at Central London**

Thomas More Building | Royal Courts of Justice | Strand | London WC2A 2LL

[Court 62; Room 1101]