Neutral Citation Number: [2025] EWHC 349 (Ch)

Case No: PT-2024-LDS-000081

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS

PROPERTY TRUSTS AND PROBATE LIST

BPC Leeds
Westgate House

Before :

MR JUSTICE NORRIS
(Sitting in retirement)

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Between :

MVL Properties (2017) Limited — **Claimant**

-and-

The Leadmill Limited — **Defendant**

- -

- -

Wayne Clark and **Daniel Black** (both of Counsel) for the Claimant

(instructed by **Fladgate LLP)**

Thomas Roe KC and **Anna Gatrell** (both of Counsel) for the Defendant

(instructed by **SBP Law**)

Hearing dates: 16,18-20 December 2024

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Approved Judgment

I direct that copies of this version as handed down may be treated as authentic.

Judgment handed down at 10.30 am on 19 February by e-mail to the parties, by placing in National Archives and by handing down at Leeds.

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MR JUSTICE NORRIS

Mr Justice Norris:

1. "The Leadmill" is a music venue and nightclub at 6/7 Leadmill Rd, Sheffield. Its origins lie in a community project that started in April 1980 to convert a derelict Victorian flour mill into a cultural centre. The building was in an extremely poor state of repair, had no utility supplies and indeed in part lacked foundations. Leases were granted to The Leadmill Ltd (as the incorporated community project was known) and extensive refurbishment work was undertaken. The project opened to the public in late September 1982.

2. A leading member of the project was Mr Philip Mills ("Mr Mills"): in his evidence he says that he made some critical interventions "without which The Leadmill would have ceased to exist." One of them was to stand surety (alongside others) for the tenant under the original leases. Over time the leases came to be vested in The Leadmill Ltd (a private company) ("Leadmill") and Mr Mills came to be the sole director and proprietor of that company, running the venue as a commercial operation. Leadmill operated a successful performance space for live music, dance, comedy and theatre, and as an exhibition space under the name "The Leadmill." It developed distinctive signage (a vertical black sign sticking out from the front of the building with "THE LEADMILL" in red neon lettering), a distinctive logo (two irregular overlapping pentagons) painted on the gable-end of the building and portrayed on a projecting sign, and a distinctively coloured "get-up", elements of which it registered as trademarks in 2002 and 2005 (in particular the sign "THE LEADMILL").

3. The most recent lease of the venue ("the Lease") is dated 14 October 2003 and created a term of 20 years starting on 25 March 2003 in favour of Leadmill. Its terms reflect the circumstances in which The Leadmill came into being as a cultural venue.

4. First, the Sixth Schedule contains a list of "improvements." These include such matters as the construction of a toilet block with drainage, the provision of foundations to one elevation of the property, the creation of a second bar area, the sandblasting of inner structural walls and their repointing, and the building of a new wall and roof to incorporate an outside area into the main building. Clause 5.10.1 of the Lease provides that at the end of the lease period the Tenant should be entitled to compensation in respect of those improvements. Clause 5.10.2 provides (in summary) that the compensation should equal the estimated aggregated costs of carrying out each of the individual improvements assessed as at the date of the Lease, that sum being indexed; but if any of the improvements should have been removed by the Tenant then the Tenant should not be entitled to any compensation in respect of the improvements that had been so removed. The compensation (i.e. the estimated aggregated cost of the improvements as at 2003) was assessed by an expert in accordance with a variation to the Lease made in July 2004. Leadmill's present expert (Mr Christopher Sullivan BSc MRICS) (to whose evidence I will return) estimates an updated Q2 2025 assessment to be of the order of £665,000. For the purposes of this case, I accept that as a working figure (but expressly not holding that to be the correct figure if the compensation exercise has to be undertaken).

5. Second, the Seventh Schedule contains a list of the fixtures and fittings installed by "the Tenant" (no distinction being drawn between those installed as part of the original community project and those installed by the successor commercial enterprise). In the Lease the expression "Tenant's Fixtures and Fittings" means the

items so listed together with "any fixtures and fittings installed by the Tenant after the date of [the] Lease." The Seventh Schedule is very lengthy: it includes cloakrooms, dressing rooms, workshops, offices, toilets, bar and café counters, performance equipment, all equipment in beer cellars, all flooring (including a kiln fired (*sic*) prime grade Canadian maple sprung dance floor with sub-structures), suspended ceilings, acoustic insulation to windows in the main bar, all fire doors, all electrical services (including all distribution boards and control gear, meters, fuse boxes and surface mounted wiring), water services and sanitary equipment, all gas services, equipment and surface mounted pipes, and all heating and ventilation systems (including gas-fired, warm air exchange heating units, boilers and ducting system, ventilation systems and related ductwork and control gear throughout the whole of the premises). Clause 3.29 of the Lease provides that the Tenant might remove the Tenant's Fixtures and Fitting when the lease period ends (subject to making good any damage caused by such removal to the reasonable satisfaction of the landlord), but the Tenant was not obliged to do so.

6. Third, clause 3.6 of the Lease contains the repairing obligation. This requires the Tenant throughout the lease period to put and keep the property both exterior and interior in good and substantial repair and condition. But this obligation did not extend to a specified area of the roof (referred to as "the Excluded Roof"). Nor did it require the Tenant to put or keep the property in a better state of repair than was recorded in a Schedule of Condition attached to the Lease.

7. The freehold of the venue was put up for sale by auction in 2013 and 2014 by a property developer who had acquired it with the intention of redeveloping the site as residential apartments. It failed to sell at two auctions. The developer offered the property to Leadmill which made an offer of £150,000. But this was not acceptable to the vendor. On 3 November 2017, the freehold reversion was acquired by MVL Properties (2017) Ltd ("MVL17"). MVL17 is a wholly owned subsidiary of Electric Group Holdings Limited ("Electric"). Electric was formed in 2013 and runs music venues in historic buildings in several locations across the UK through its operating subsidiary Music Venues Ltd ("MVL"). Electric has two shareholders: Dominic Madden ("Mr Madden") and Jacob Lewis ("Mr Lewis"). Mr Madden is the sole director of MVL17. Mr Lewis is the majority shareholder and also the principal limited partner of Orpheus Investment Holdings LP ("Orpheus") which historically has provided loan finance to Electric to acquire and refurbish music venues at Brixton, Bristol and Newcastle.

8. The Lease falls within the scope of Part II of the Landlord and Tenant Act 1954 ("the 1954 Act"). The term created by the Lease was due to end on 25 March 2023 (subject to continuation of the tenancy under the provisions of the 1954 Act). On 28 March 2022 MVL17 gave notice under s.25 of the 1954 Act terminating the tenancy on 26 March 2023 and saying that it would oppose the grant of a new tenancy on the ground specified in s.30(1)(g) of the 1954 Act viz. that on the termination of the current tenancy MVL17 intended to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by it therein. (Paragraph (g) also refers to the use of the holding as a residence for the landlord; but that is not material in the present case). If MVL17 establishes this ground to the satisfaction of the Court, then "the Court shall make an order for the termination of the current tenancy in

accordance with s.64 of [the 1954 Act] without the grant of a new tenancy": see s.29(4)(a) of the 1954 Act.

9. On 27 July 2022 MVL17 issued a County Court Claim form seeking to establish ground (g) to the satisfaction of the Court. In its Particulars MVL17 stated:-

> "The Claimant's intention is to undertake a minor refurbishment of the existing Leadmill premises to improve its backstage facilities. Once the refurbishment is completed the Leadmill premises will be operated and managed by the Claimant and form part of the Electric's touring circuit. It will therefore continue to host and promote a range of live music, clubs and arts events within the premises."

In accordance with established practice, the Claim Form also contained MVL17's proposals for the terms of a new tenancy in the event that its claim for the determination of the tenancy failed. The claim was first transferred to the County Court at Sheffield (where District Judge Baddeley ordered the trial as a preliminary issue of the question whether MVL17 "satisfied the ground of opposition to a new tenancy" set out in s.30(1)(g) of the 1954 Act): and then it was transferred to the Business and Property Courts at Leeds. It was this preliminary issue that I heard at Leeds from 16-20 December 2024.

10. The principles applicable to the determination of this question are well settled, are set out in many cases, and may be shortly summarised as follows.

a) The burden lies upon MVL17 to establish that it has the relevant intention: Cunliffe v Goodman [1950] 2 KB 237 at 254. Leadmill does not have to prove anything. Leadmill merely has to raise challenges which call for an answer from MVL17 in order that it may discharge the burden which lies upon it.

b) MVL17's intention has to be established at the date of the hearing: Betty's Café Limited v Philips Furnishing Stores Ltd [1959] AC 20.

c) The relevant intention is one to occupy the holding *on the termination of the current tenancy* and *for the purposes of a business* to be carried on therein by MVL17. That is what section 30(1)(g) says.

d) This relevant intention has both a "subjective" and a so-called "objective" element: Gregson v Cyril Lord [1963] 1 WLR 41 at 45.

e) The subjective element requires a firm and settled intention to undertake the course of conduct: Cunliffe *op.cit.* at 253.

f) The so-called "objective" element requires a demonstration that there is a reasonable prospect of being able to bring about the fulfilment of that intention: this is really no more than an expression of the fact that, in order for an intention to be rationally held, it must be capable of achievement: Macey v Pizza Express (Restaurants) Limited [2021] EWHC 2847 at [11].

g) The requirement to demonstrate "a reasonable prospect" is satisfied by showing a real, not merely a fanciful, chance: Gatwick Parking Services Ltd v Sargent [2000] 2 EGLR 45 at 46 B and 49J.

h) By judicial gloss the requirement to intend so to act "on the termination of the current tenancy" is satisfied by an intention so to act within a reasonable time after the termination of the current tenancy: London Hilton Jewellers v Hilton International Hotels Ltd [1990] 1 EGLR 112 at 114d (citing Method Developments v Jones [1971] 1 WLR 168 at 172).

11. I am satisfied that MVL17 has proved the necessary subjective element of its intention. At the commencement of his evidence Mr Madden, the sole director of MVL17, offered to the court the following undertaking:-

> "MVL Properties (2017) Ltd undertakes to the Court that in the event of it obtaining possession of the premises now occupied by The Leadmill Ltd ("the Premises"), it shall as soon as reasonably practicable undertake works to fit out the Premises to operate as a music and entertainment venue ("the Works"), occupy the Premises for the purposes of establishing a music and entertainment venue; and upon completion of the Works, forthwith and subject to any appropriate statutory requirements, occupy the Premises for the purposes of a music and entertainment venue".

It has been held that such an undertaking "is perfectly decisive of the fixity of intention": Espresso Coffee Machine Co Ltd v Guardian Assurance Co [1959] 1 WLR 250 at 257.

12. In the present case this undertaking does not stand on its own: it is supported by a good deal of other material.

a) MVL17 is a member of the Electric group which has operated music venues since 2013 and which currently operates venues at Brixton, Bristol and Newcastle.

b) As at 5 October 2023 MVL17 had spent over £128,000 on applying for planning consent for intended refurbishment works, on consulting with designers in relation to interior works (in particular, the replacement of bars, services and performance areas), on preparation of drawings for costings and building control approval and on the preparation of drawings for proposed exterior works. Key work had been undertaken by November 2022 (when details of it were provided to Leadmill).

c) As at 13 September 2024 this sum had risen very substantially. Mr Madden's evidence was that it amounted to just under £380,000, and on this he was not cross-examined. I note however that this figure includes substantial legal fees, some incurred in connection with the claim. But even with that caveat it cannot be disputed that MVL17 has committed very substantial sums to its project (in excess of the sum Leadmill was prepared to commit to the purchase of the freehold).

d) MVL17 applied for a shadow licence for the venue and, against fierce opposition from Leadmill, obtained such on 22 September 2023, incurring legal costs of over £20,000. An appeal by Leadmill against the grant has been dismissed.

e) In 2022 MVL obtained the registration of the trademark "Electic Sheffield" (the plan being that it would licence its use by MVL17). Subsequently MVL17 has instructed a branding specialist to prepare a new brand for the venue and has incurred fees of £12,500 in relation to that work. The present intention is to rebrand the venue as "SK 35", and a brochure and a launch strategy have been prepared.

13. I would be satisfied as to the subjective intention of MVL17 to occupy the venue for the purposes of a business to be carried on by it therein upon the basis of the offered undertaking alone. But each of the foregoing matters reinforces that conclusion.

14. I am also satisfied that MVL17 has proved the necessary objective element of its intention. This requires a consideration of the position as it is anticipated to be at the termination of the current tenancy.

15. It was the evidence of Mr Mills that in the event that he was unable to obtain a new tenancy then, as Plan B, he would contemplate opening up the Leadmill elsewhere, not necessarily in Sheffield. Notwithstanding that possibility and its attendant outlay, he said that he would in that event remove all the fixtures and fittings from the holding (which Mr Mills had been advised would cost some £70,000 plus the cost of making good) and undo all of the improvements (thereby forgoing a compensation payment of some £665,000) so reducing the premises to their original state of dereliction so far as he could. When I enquired of him what benefit this expenditure and loss totalling nearly three quarters of £1 million could be to the company of which he was director he said that the commercial logic was that he could dispose of the dismantled dancefloor as souvenir mementos (as had happened in 2018 with the original dancefloor, raising some £40,000) and obtain some second-hand sanitary-ware that he could reuse. I was unconvinced by this evidence. But I was asked by MVL17 to proceed upon the footing that this is indeed the probable scenario that would occur on the termination of the tenancy: and that is what I shall do. On that footing considerable work would be required to restore the holding to a state fit for use as a music and entertainment venue.

16. What was the necessary work, what it would cost and how long it would take was the subject of expert evidence. As I have already indicated, the expert called by Leadmill was Mr Sullivan: he is a member of the specialist dilapidations team at Hollis and its Midlands Regional Director. The cost estimates contained in his report were prepared by a chartered quantity surveyor from within his firm. The expert called by MVL17 was Mr Mark Tatlow MBA BSc MRICS, a Chartered Building Surveyor and since 2009 Senior Director of CBRE Ltd.

17. Where their opinions differ I prefer the opinions of Mr Tatlow. First, his report is more coherent and more consistent than that of Mr Sullivan. Indeed, Mr Sullivan found it necessary to issue a letter of clarification very shortly before the hearing

because he realised that in his original report there were some inconsistencies and some matters had not been carried through as intended. He very candidly said that his original report was not his best work because it was rushed: he was told at 11am that his final report was required by 4pm. I note that the report was produced after the time specified by the court and only admitted in evidence as a result of an application for relief from sanctions. I do not suggest that Mr Sullivan was responsible for that time pressure: but its existence is apparent from his report. Second, Mr Sullivan's report contains a significant error of principle: he estimates the prospective costs faced by MVL17 as including both the payment of compensation (on the footing that the improvements to the premises remain) and the costs of reinstatement (on the footing that the improvements to the premises are removed): see paragraph 1.2.1 of his clarification letter. Third, his proposed timings for the works cannot be interrogated because (unlike Mr Tatlow) he did not produce a phased programme of work. He estimated the time required for the planning and execution of individual facets of the work and then simply concluded (in paragraph 4.5.2 of his report) that the works would take 6 months to reach the end of RIBA stage 4 and approximately 12 to 14 months to reach RIBA stage 7 (where the premises will be ready for handover). It is not possible to ascertain what works he thought were sequential and what could be undertaken contemporaneously. Fourth, it was difficult to interrogate the costings set out in his report because these had been provided by another. But it was apparent that there was some double-counting e.g. in relation to air-conditioning and in relation to the construction of a toilet block. Fifth, notwithstanding his candour he was more rigid in his adherence to the views expressed in his report than was Mr Tatlow who, in cross-examination, was prepared to make concessions and to acknowledge alternative possibilities (e.g. in relation to the configuration of the ventilation system or the possible need to engage an engineer). Thus, for example, in cross-examination Mr Sullivan maintained that some £680,000 of VAT should be included in the costings even though he acknowledged that he expected that MVL17 was probably VAT registered; he did so on the footing that he was "not a VAT expert".

18. If one eliminates the error of principle to which I have referred above, it is Mr Sullivan's opinion that MVL17 would need to fund between £4 to £4.1 million to take the premises from their configuration and condition after Mr Mills' removal of fixtures, fittings and improvements to MVL17's intended configuration and condition as an operating live music venue of the type they envisaged. Of that sum approximately £3 million represents the cost of rectifying (on a like-for-like basis) the stripping out works which Leadmill is assumed to have undertaken, and the balance the renewal and reconfiguration works intended by MVL17 to bring the premises up to Electric standards and suitable for their business model. The £3 million figure includes an assessment of the costs for the acquisition and reinstallation of DJ, sound and stage lighting equipment amounting to £345,000. The anticipated duration of the works is, in Mr Sullivan's opinion, 18 to 20 months.

19. It is the opinion of Mr Tatlow that, on the assumption that Leadmill undertakes the stripping out works which Mr Mills had indicated, the costs to MVL17 of creating an operating live music venue meeting its standards and model would (at present values and ignoring VAT) be £2.012 million. This figure includes a sum for the replacement of the roof over the dancefloor and (because its mode of construction makes it unavoidable) the adjacent Excluded Roof. Mr Tatlow agrees with Mr Sullivan that these roofs are beyond their useful life. Mr Tatlow's costings do not include anything

in respect of DJ, sound and stage lighting equipment because he has been told by Mr Madden that MVL17 will hire (not purchase) these items. The anticipated duration of the works according to a detailed programme prepared by Mr Tatlow, and identifying the critical path, is 35 weeks from the obtaining of possession. He acknowledged in cross-examination that if one curtailed tender periods for facets of the work then you would not necessarily get best value: but he maintained that the tender periods he had allowed for in his programme were "pretty standard". I see no need to make any increase to Mr Tatlow's programme length.

20. Mr Sullivan assumed for the purposes of his expert report that MVL17 would replace everything that Leadmill removed on a like-for-like basis. Mr Tatlow assumed for the purposes of his expert report that MVL17 would follow his recommendations. Mr Madden was clear in his evidence that neither assumption was well-founded and that the work that MVL17 intended to undertake was a pragmatic refurbishment not a restoration, and to do so based upon his 20 years of first-hand experience of developing and refurbishing music venues. Thus, however clear and unanimous the advice, MVL17 did not intend to replace the roof over the dancefloor or the Excluded Roof. Nor did MVL17 intend to replace the Canadian maple sprung dance floor (if removed) but would instead lay a plywood floor on "firrings" (to level the sloping and uneven concrete floor). Further, Mr Sullivan had allowed £130,000 for the installation of a like-for-like replacement stage over a seven-month period: whereas Mr Madden's experience was that a premade metal modular stage erected in days (for which he had a quotation of £17,000) would suffice. Mr Sullivan had estimated the costs to MVL17 of replacing the bar infrastructure on a like-for-like basis at £120,000. It was Mr Madden's experience that the drinks suppliers were likely to fund that expenditure (though certain infrastructure would have to be provided by MVL17 for which Mr Tatlow's costings allowed). Mr Madden's evidence was that his pared-back pragmatic programme would take about 20 weeks (based both on his present contractor's quotation and his own experience of refurbishing the much larger Bristol and Newcastle venues). Mr Tatlow considered that Mr Madden's reduced programme would take about 26 weeks.

21. If from Mr Sullivan's estimated costs of the works to remedy Leadmill's stripping out of the venue one (i) removes the VAT (ii) eliminates the double counting (iii) deducts the total of MVL's intended savings (iv) adds the uplifted costs of MVL17's refurbishment works and (v) allows compensation for those improvements which cannot be reversed (such as the foundations, sandblasting and pointing of brickwork) then the cost to MVL17 of recreating a functioning music venue meeting their standards and fitting their business model would be roughly £2.1 million. Re-analysis of Mr Tatlow's 2024 estimate of £2.01 million (because Mr Madden would not do all of the work which Mr Tatlow had recommended) if uplifted to 2025 values would produce a slightly lower figure. But for the purpose of the present exercise I can take the probable costs of the necessary works as £2.1 million. (The purpose of the present exercise is not to produce a priced schedule of works but to test the rationality and reality of MVL's stated intention to undertake the work necessary to rectify Leadmill's dereliction of the building and refurbish it to appropriate standards).

22. I should record that there was some skirmishing around minor elements of those works. One such was the question whether the air-conditioning units (which are bolted to the wall above a roof) were "fixtures" at common law (and so had to be left

by the tenant) or were "fittings" removable by the tenant: Faggotter v Dowel (1993) SASR 3799 was cited. In the present case I agree with Mr Roe KC that the air-conditioning units are removable because of the terms of the Seventh Schedule and the definition used in the Lease (to which I have referred). There was in similar vein cross examination about whether "firrings" could underpin the replacement dancefloor or whether a wooden substructure would be required. But the outcome of these skirmishes has no material impact upon the issue for decision viz. is there a real chance that MVL17 will undertake the work? I shall proceed on my finding that the costs of the necessary works may be placed at around £2.1 million.

23. On that basis I am satisfied that MVL17 has a realistic chance of completing the works because it can afford expenditure at that level (and indeed well beyond it). First, MVL17 has available a £3 million loan offer from Mr Lewis (deriving from his investment in Orpheus): and Mr Lewis's private bankers have confirmed that he has that sum in his account. In his oral evidence Mr Lewis confirmed the availability of £3 million and that "it may be over". The available funding therefore provides significant headroom. Second, as at the date of the hearing Electric group had in excess of £2.4 million in its bank account. It is right to note that some £393,000 of this is ticketing money for which Electric group is accountable to others, and (even though it represents a revolving deposit) I do not think that a prudent director would regard it as being at the free disposal of the group. Nonetheless there is a healthy residual balance of which over £1.35 million is in "on notice" savings accounts (and so apparently not required to fund immediate operational needs). Electric has formally supported MVL17's proposals in relation to the venue and it is realistic to suppose that it would, if necessary, provide financial support to its wholly-owned subsidiary. Third, Electric group is trading well and generating profits, anticipated to be £1.9 million in the current financial year. It has in the past used this income stream to repay previous borrowing from Orpheus which funded the renovation at Bristol and the refurbishment at Newcastle.

24. On the totality of this evidence I am satisfied that MVL17 has a realistic prospect of embarking upon and completing all necessary works to enable it to operate the music venue of the type it envisages at the holding.

25. Given the nature and quality of this evidence Mr Roe KC for Leadmill had very little room for manoeuvre. But he mounted four challenges.

26. First, attention was drawn to the length of the reinstatement and refurbishment programme. In Leadmill's Skeleton Argument (building upon a plea in paragraph 5D in the Amended Defence) it was submitted that a landlord would not be able to realise an intention to carry on the business at the property "on the termination of the current tenancy" if it first intended to carry out an extensive programme of works. Reliance was placed upon some observations of Simon Brown LJ in Bacchiocchi v Academic Agency Ltd [1998] 1 WLR 1313 at 1322 that whilst, if premises were empty for a short period at the end of the lease, that would not lead to a finding that the business occupation had ceased

> "if… premises are left vacant for a matter of months the Court would be readier to conclude that the thread of continuity has been broken."

Mr Roe KC equated "not trading" and "being left vacant". I do not accept this submission.

27. The relevant intention is an intention to occupy the building for the purposes of the business to be carried on therein. Occupying for the purpose of rendering the premises fit for the conduct of the intended business by refurbishment or fitting out is occupation for the purposes of a business: see Pointon York Group v Poulton [2007] P & CR 6. The evidence is clear that Mr Madden intends to begin work as soon as MVL17 obtains possession; and he has made appropriate security arrangements ready for implementation and has also lined up contractors to begin the works.

28. Furthermore, it is common ground that the words "on the termination" are to be read as including "or within a reasonable time thereafter." Even if what is required is the commencement of trading (not the commencement of works preparatory to trading) what is a reasonable time within which actually to commence and complete work and enable the commencement of trading must depend upon the condition of the premises on the termination of the tenancy. Leadmill cannot be heard to say "*Because we intend to reduce the premises to a state of dereliction it will be impossible for you objectively to intend to occupy for the purposes of a business within a reasonable time*". I do not consider Mr Tatlow's 35-week programme to be an unreasonably long one given the state in which Mr Mills intends that the building should be left. *A fortiori* I do not consider his reduced 26-week programme (or Mr Madden's 20-week programme) unreasonably long.

29. Second, Mr Roe KC drew attention to one line in the last audited consolidated accounts of Electric. This showed net current liabilities of £1,141,048 as at 31 May 2023. He suggested that in the light of that figure further borrowing of £3 million was unwise and unlikely. Mr Madden rejected this proposition and so do I.

30. As to this line of attack it is useful to bear in mind what Auld LJ said in Dolgellau Golf Club v Hett (1998) 76 P&CR 526 at 534:

> "It is not an incident of the statutory formula, nor of the present judicial gloss upon it, that a landlord, in seeking to satisfy the court of the reality of his intention, should be subjected to minute examination of his finances with a view to determining financial viability and durability of the business he intends to establish. The court is not there to police a landlord's entitlement to recover possession of his own property by examining the financial wisdom of his genuinely held plans for it."

In fact, in the instant case such an examination can be undertaken.

31. The figure for net current assets was what Mr Madden described as "technical." It arose from the fact that the refurbishment of the Bristol venue (following an arson attack) was undertaken before settlement of the related insurance claim: and indeed Note 14 to the same accounts records as a post-balance sheet event the receipt of £1,223,000 from the insurance settlement. Further as to the likelihood of the borrowing being undertaken, it is notable that MVL17 has no external borrowings and that the intended borrowing is being advanced (in effect) by the major shareholder in the venture. Finally, Electric group had at the relevant date total net assets of some £5.9 million represented to a significant extent by unencumbered freehold property

and as at the date of the hearing was trading profitably. It is therefore well-placed to borrow.

32. Third Mr Roe KC suggested to Mr Lewis that MVL17 "could not fund at this level, at least not yet". Mr Lewis rejected the suggestion that there would be any delay and said that MVL17 was going to undertake the work "as fast as possible". I accept this evidence supported as it is by (i) the ready availability of funds as evidenced by the bank's letter and (ii) the actions and expenditure already undertaken in pursuit of the project.

33. Fourth, Mr Roe KC referred to a press item by Christie & Co reporting Electric's proposed refurbishment of the Newcastle venue at a cost of £1.5 million, and he noted that the refurbishment had eventually cost £4.1 million. He suggested that, in the light of this, Mr Madden's cost projections were over-optimistic. Mr Madden rejected the suggestion. He said that the press report was itself wrong and that the Newcastle forecast had always been for a £2.5 million expenditure. Whilst he acknowledged that the eventual outcome had been £4.1 million he said that that was the result of the impact of COVID, that the increased cost had in fact been funded by Orpheus and that as at the date of the hearing it had all but been repaid out of income. What happened in Newcastle does not cause me to alter my assessment of the position in Sheffield: indeed it demonstrates the resilience of the Electric group expansion strategy.

34. For these reasons I am satisfied that the grounds set out in section 30(1)(g) of the 1954 Act are established and that (subject to any legal obstacles) MVL17 is entitled to the order for possession which it seeks. In truth the main thrust of Leadmill's challenge lay in arguing that whatever MVL17 might establish on the evidence there were insuperable legal obstacles which prevented the Court from making such an order and which compelled the Court to grant a new tenancy to Leadmill. It was accepted that this course was open having regard to the formulation of the preliminary issue. Three such obstacles were raised, two of which can be dealt with summarily.

35. The first suggested obstacle is raised in paragraphs 5A and 5B of the Amended Defence dated 23 May 2024 (which Amended Defence was signed by Counsel other than Mr Roe KC and Miss Gatrell). These paragraphs allege that the business that MVL17 intends to carry on would not lawfully be carried on

> "… because customers are likely to be misled into thinking the business is the Defendant's business or associated with that business, damaging the Defendant's goodwill and thus constituting passing off. Further, the Claimant's actions would constitute infringement of the… trademarks of which the Defendant is the registered proprietor…"

In April 2022 Mr Madden had said in a media interview and on social media

> "I would just like to say again, the Leadmill won't be closing. We are retaining it…"

and again

> "We aren't changing The Leadmill. It will stay as it is albeit we are intending to refurbish the dressing rooms, upgrade some of the backstage

facilities and intend to retain the name and all the staff…"

There were other comments in similar vein.

36. In his evidence Mr Madden explained that the context in which these statements were made was (i) a desire to respond to a very active social media campaign that was asserting that the venue was closing and was to be redeveloped as residential accommodation and so to communicate in a simple way that the premises would continue to be a music venue; and (ii) that at that time he hoped to do a deal with Mr Mills. But it soon became clear that Mr Mills was not interested. In fact, at the end of April 2022 MVL (not MVL17) obtained the registration of the trademark "Electric Sheffield" as a potential trading identity. However, it was not settled that this identity would be used and on 2 May 2024 Leadmill was informed that MVL17 had yet to decide on the brand identity, a name and presentation of the property and business. At the date of the hearing, whatever the original hopes might have been, it was clear that the business will operate under new and distinctive branding and indeed would be a different type of music venue from that previously operated by Leadmill (as Mr Madden explained in his witness statement of 13 September 2024). In the result, this aspect of the Amended Defence was rightly not pursued.

37. The second suggested obstacle was raised in paragraph 5E of the Amended Defence. This asserted that the words in section 30(1)(g) of the 1954 Act referring to the landlord's intention to carry on a business on the holding

> "….do not refer to an intention to continue the business of the sitting tenant. The words mean a distinct business that is not presently being carried on the premises. In particular… If section 30(1)(g) were to be read as including the continuation in fact of the existing business at the Premises it would enable a landlord to acquire for itself a substantial part of the goodwill of that business without providing compensation to the tenant. That is not the intention or purpose of the 1954 Act."

38. This plea was rightly not pursued at trial because it is directly contrary to the law as stated by Vos J (as he then was) in Humber Oil Terminal Trustees Limited v Associated British Ports [2011] L&TR 27. Dealing with a submission that the legislation cannot have been intended to allow a landlord to "expropriate" a tenant's business and assets (which the judge described as a "a pejorative way of putting the point") Vos J said of the exception contained in section 30(1)(g) to the general renewal right:-

> "This exception is not a charter for expropriation. It is a function of another aspect of the policy of the legislation, to the effect that landlords should be entitled to their land back, notwithstanding the tenant's security of tenure, if they genuinely wish to use that land for their own business purposes…or for redevelopment. There is no objection to a supermarket chain buying up freehold interests in another supermarkets' shop premises… just because they wish to oppose the grant of a new tenancy so that they can take over their competitor's site. I am sure that worldly-wise supermarkets are alive to this possibility, but if it were to happen, I cannot see how the target supermarket could cry foul, when the predator took over its building and operation and simply changed the name above the door."

On appeal the Court of Appeal did not disagree with this analysis. In the instant case Mr Roe KC rightly did not pursue the point but reserved the right to argue elsewhere that the decision was wrong.

39. This leaves the third suggested obstacle, raised in paragraph 5E.2 of the Amended Defence(on which Mr Roe KC laid the greatest emphasis) which is to make the same "pejorative" point but in a different legislative context. Mr Roe KC argued (i) that section 30(1)(g) of the 1954 Act must (by virtue of section 3(1) of the Human Rights Act 1998) be read and given effect in a way which is compatible with Convention rights: (ii) that the section must therefore be read as not applying to a case where the landlord intends to carry on "essentially the same business" as that which the tenant has been carrying on at the premises, since that would have the result of appropriating for himself the tenant's goodwill that had become attached to the premises (which he called "the adherent goodwill") in contravention of the tenant's right to property under article 1 of the First Protocol to the European Convention on Human Rights ("A1 P1").

40. In advancing this submission Mr Roe KC drew upon some of the arguments made and conclusions reached in an article by Prof Haley of the University of Keele entitled "*Section 30(1)(g) of the Landlord and Tenant Act 1954: the Unjust Relegation of Renewal Rights"*[2012] CLJ 118.

41. Both Mr Roe KC (for Leadmill) and Mr Clark and Mr Black (for MVL17) began their arguments and counter arguments with the Landlord & Tenant Act 1927. Building upon the work begun in 1892 the 1927 Act introduced measures designed to prevent the landlord at the termination of a commercial tenancy taking unfair advantage of an enhancement to the value of the premises brought about by the tenant during the currency of the term.

42. Thus section 1 of the 1927 Act provided that the tenant should be entitled to be paid compensation in respect of any improvement on the holding made by him which added to the letting value of the property, limited to the net addition to the value of the holding as a whole as a direct result of that improvement. Section 4(1) of the Act then provided that the tenant should be entitled, at the termination of the tenancy on quitting the holding

> ".. to be paid by his landlord compensation for goodwill if he proves to the satisfaction of the tribunal that by reason of the carrying on by him… at the premises of a trade or business for a period of not less than five years goodwill has become attached to the premises by reason whereof the premises could be let at a higher rent than they would have realised had no such goodwill attached thereto Provided That (a) the sum to be awarded as compensation for such goodwill shall not exceed such an addition to the value of the holding at the termination of the tenancy as may be determined to be the direct result of the carrying on of the trade or business by the tenant… and in determining such addition the tribunal shall, if it is proved that the premises will be demolished wholly or partially, or used for a different and more profitable purpose, have regard to the effect of such demolition or change of user on the value of the goodwill to the landlord…".

Goodwill so ascertained was often referred to as "the adherent goodwill" .

43. If, however, the tenant proved that the compensation so payable would not compensate him for the loss of goodwill he would suffer if he removed to carry on his business in other premises, then he could claim a renewal of his tenancy under section 5 of the 1927 Act. But his claim for renewal would not succeed if the landlord proved (amongst other grounds) that the premises were required for occupation by it or him.

44. Counsel are agreed that the 1954 Act radically changed this approach to tenant protection by greatly extending the rights of renewal (creating a presumptive but defeasible right) and by providing only for compensation for disturbance (assessed by reference to rateable value) where tenancies were not renewed. In his article Prof Haley observed (at pp.120 and 126):

> "Although the tenant may still be entitled to claim compensation for loss of those renewal rights the award has nothing to do with financial realities and disregards entirely any loss of the tenant's goodwill."

He went on to argue (and Leadmill here submits)

> "Put starkly, there is nothing in ground (g) to prevent the landlord recovering possession, running a business identical to that operated by the tenant and thus benefiting from that tenant's establish goodwill… The potential deprivation of the tenant's business goodwill without adequate recompense undeniably offends fundamental notions of fairness and human rights….
>
> From the tenant's perspective, the existence of goodwill will often be of significant value. It is property that exists independently of the lease, and hence remains a business asset that may be sold or, indeed, exported to new premises...
>
> Significantly the impact of ground (g) on the tenant's goodwill (and unlike with the defeat of the tenant's contingent right to a new lease) appears to contravene Article 1 Protocol 1 of the European Convention on Human Rights… Unlike opposition under the redevelopment ground (f), there is not a scintilla of public interest underlying section 30(1)(g). Indeed, it upsets the fair balance that should be struck between the protection of property rights in the general interest. Accordingly, the deprivation of goodwill, without any compensatory award reflecting the value of the asset taken, manifestly represents a disproportionate and serious interference with the tenant's rights. It imposes an unacceptable and excessive burden on the tenant that simply cannot be legitimised in the absence of an effective compensation package…."

45. Mr Roe KC's submissions part company with Prof Haley's argument and conclusions in two respects. First, whilst Prof Haley suggests that the effect of A1 P1 is to require the payment of compensation for the "expropriation" of goodwill Mr Roe KC says that the effect of the application of A1 P1 is to prevent the landlord obtaining possession (and thereby "expropriating" the goodwill) and compels the grant of a new tenancy. Second, Mr Roe KC suggests (which Prof Haley does not) that it is possible to "read down" section 30(1)(g) of the 1954 Act pursuant to section 3 of the HRA 1998 so as to achieve this result.

46. The first step in analysing these arguments is to identify what rights A1 P1 protects. It provides:-

> "1. A natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law and by the general principles of international law.
>
> 2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

It accordingly deals with "possessions" i.e. things tangible and intangible that are presently held. It comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers deprivation of possession and it subjected to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property by enforcing such laws as they deem necessary in the general interest. These three rules are not distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule: see Tre Traktorer Aktiebolag (1989) 13 EHRR 309 at 323. The argument in the instant case, with its emphasis on "expropriation", focussed on the second rule (deprivation of possessions) though there was occasional reference to the general rule (contained in the first sentence).

47. The second step in analysing the argument is to examine whether "goodwill" can be a "possession": and this in turn requires some clarification of the term "goodwill." Loosely speaking, it is the reputation of the business which enables it to connect with and be attractive to customers: see e.g. IRC v Muller [1901] AC 217 at 223. It consists of several (if not many) elements. These may include (to varying degrees) the name of the business, the style of the business, the nature and quality of its service or product, the identity of the proprietor or the location of the business. In most cases it will be unnecessary to break down the constituent elements: but in some cases it will be necessary. In the instant case Mr Roe KC refers to MVL17's "expropriation" of the "adherent goodwill" (an expression having its origins in the 1927 Act and meaning an enhancement in the letting value of the property).

48. Reverting to the question of whether "goodwill" can be a "possession" within A1 P1 I would hold that in principle it is capable of being so provided that it is an asset with a monetary value. In Van Marle v The Netherlands (1986) 8 EHRR 483 the state introduced a registration system for those seeking to use the title "Accountant". The applicants had been using the title for their professional activities but were refused registration under the new regime. The court held:-

> ".. by dint of their own work, the applicants had built up a clientele; this had in many respects the nature of a private right and constituted an asset and, hence, a possession within the meaning of the first sentence of Article 1… The refusal to

> register the applicants as certified accountants radically affected the conditions of their professional activities and the scope of those activities was reduced. Their income fell, as did the value of their clientele and more generally their business..”

In Tre Traktorer (*supra*) a restaurant’s licence to serve alcohol was revoked because of the unfitness of the operator (TTA). The Court found (again in the context of the first sentence of A1 P1) :-

> “… The maintenance of the licence was one of the principal conditions for the carrying on of the applicant company’s business, and that its withdrawal had adverse effects on the goodwill and value of the restaurant. Such withdrawal thus constitutes, in the circumstances of the case, an interference with TTA’s right of the peaceful enjoyment of its possessions.”

In Iatridis v Greece (GC) App No 31107/96 (1999) the applicant had since 1978 operated an open-air cinema as tenant on land the title to which was in dispute between the purported lessor and the Government. The relevant authorities made him the subject of an administrative eviction order and, although that order was judicially quashed, refused to permit him to regain possession. The court observed

> “.. before the applicant was evicted, he had operated the cinema for 11 years under a formally valid lease without any interference by the authorities, as a result of which he had built up a clientele that constituted an asset… In these circumstances, there has been an interference with the applicant’s property rights. Since he holds only a lease of his business premises, this interference neither amounts to an expropriation nor an instance of controlling the use of property but comes under the first sentence of the first paragraph of Article 1”.

These cases show that some “goodwill” is capable of amounting to a “possession.”

49. The third question to address is whether Leadmill has established the existence of such a “possession.” The existence of the relevant “goodwill” (adherent goodwill) cannot merely be asserted: it must be proved. The burden is on Leadmill to do so. I find that it has not discharged that burden. The only direct evidence produced was a schedule of predicted earnings for the venue if Leadmill continued to conduct its business at the venue for the next 20 years at the rent fixed in 2003. But it is clear that an expected future income stream does not constitute a present “possession” for the purposes of A1 P1: Bryer Group v Department of Energy [2015] 1 WLR 4559 at [28] to [49]. In his written evidence Mr Mills stated that the Leadmill name, location, physical appearance and distinctive façade were all key aspects to its “identity”; that given the history of the building, that in itself was a significant part of “Leadmill’s branding”; but that there were three pieces of signage that were of particular importance (and he described them). It does not follow that because the building was part of Leadmill’s “identity” and “branding” it must also be part of MVL17’s identity and branding. In re-examination Mr Mills said that “the Leadmill name” and the building were “indivisible.” This is plainly not right. Leadmill will retain ownership and control of its registered trademarks and its “get up” and is free to exploit all the goodwill attaching to them in any new business that Mr Mills establishes (as he said he might under “Plan B”). In his written evidence Mr Mills further stated that Leadmill’s goodwill was valued at £100,000 in its accounts to the year-end 31 March 2023. However, he offered no explanation as to how this figure was reached: and it

apparently relates to goodwill in general (including that relating to the trademark signs and get up which Mr Mills will destroy in the course of reducing the building to a shell and the advantage of which he will take with him in any new venture he founds). The Court simply cannot identify or value what Mr Roe KC called "the adherent goodwill." This was acknowledged to be a difficult task under the 1927 Act: and it is probably rendered more difficult by Mr Mills' determination to reduce the building to a shell. What is the "adherent goodwill" of a derelict shell that used to be a cultural centre and music venue?

50. That finding is sufficient to decide that the A1 P1 argument leads nowhere on the facts of this case: and I would so hold. But I will (out of respect for the arguments advanced and because some further fact finding is required in the event that I am wrong) continue the analysis on the footing that there exists some notional goodwill of an ascertainable value which might constitute a possession for the purposes of A1 P1. The next issue then to be addressed would be whether Leadmill has been "deprived" of that possession.

51. Counsel for Leadmill argued that what was here involved was "deprivation or something very close to deprivation" of that possession. Counsel for MVL17 argued that Leadmill would not be "deprived" of such a possession because it only ever had a contingent right to renewal and the landlord has established that the relevant contingency has occurred: it does indeed want the premises for the purposes of its own business. As Lord Hope of Craighead put it in Wilson v First County Trust [2004] 1 AC 816 at [106]

> "[A1 P1] does not confer a right of property as such nor does it guarantee the content of any rights in property. What it does instead is to guarantee the peaceful enjoyment of the possessions that a person already owns, of which a person cannot be deprived except in the public interest and subject to the conditions provided for by law… Here too it is a matter of domestic law to define the nature and extent of any rights which a party acquires from time to time as a result of the transactions which he or she enters into. One must, of course, distinguish carefully between cases where the effect of the relevant law is to deprive a person of something that he already owns and those where its effect is to subject his right from the outset to the reservation or qualification which is now being enforced against him".

I found that guidance to be helpful. I was not referred to any consideration by the ECHR of the question: though I note that in none of the cases referred to above did the ECHR consider that the failure to register, or the revocation of the licence or the failure to restore possession amounted to a "deprivation" or "expropriation" of a possession, analysing the position instead as one of "interference" within the general rule.

52. I would hold that Leadmill never had an unqualified right to continue to exploit "adherent goodwill." Under the 1954 Act it might be unable so to do because its conduct disqualified it from obtaining a new tenancy, or because the landlord wished to re-let the property as a whole, or because the landlord intended to demolish or reconstruct or undertake substantial work to the property, or because the landlord wished to occupy the property as a residence or (as here) for the purpose of his own business. That was the nature of the right which Leadmill obtained under the

transaction it entered in 2003, and the present case is simply an instance of one of those qualifications being enforced against it. If Leadmill is right, in each of the cases I have adumbrated the landlord would be required to grant a new tenancy if there was any notional adherent goodwill of unascertained value of which the tenant was "deprived" (irrespective of whether it was acquired by anyone).

53. If I am wrong about that then the question will arise whether such "deprivation" (or "interference") had occurred in the public interest and subject to conditions provided for by law. It was common ground that the Court should pose four questions:-

(a) Does the legislation have a legitimate aim i.e. promote a public interest?

(b) Is the method chosen rationally connected to that aim?

(c) Are the measures taken necessary or could less intrusive measures have been adopted?

(d) Is a fair balance struck?

It is useful to note at this point again the context in which these questions fall to be answered. Leadmill is not arguing that it should be compensated for the "adherent goodwill" of which it says it has been "deprived." It is arguing that the very existence of "adherent goodwill" means that the Court cannot grant MVL17 possession and must grant Leadmill a new tenancy, and that the 1954 Act should be "read down" to achieve that outcome.

54. Identifying the aim of the 1954 Act Counsel for Leadmill relied on some words of Lord Wilberforce in O'May v City of London [1983] 2 AC 726 at 747 describing the "general purpose and policy of the Act" as being

> "to provide security of tenure for those tenants who had established themselves in business in leasehold premises so that they could continue to carry on their business there".

I do not think Lord Wilberforce (or any of their other Lordships) intended that remark completely and comprehensively to state the entire objective of the 1954 Act in unqualified terms. The preamble to the 1954 Act itself says that its objective is (so far as relevant)

> "to enable tenants occupying property for business, professional or certain other purposes to obtain new tenancies *in certain cases*…." (Emphasis supplied).

The preamble thereby acknowledges that there will be cases in which a tenant will *not* be able to obtain security. That is because as Vos J pointed out in Humber Oil (*supra*) such cases are

> "a function of another aspect of the policy of the legislation, to the effect that landlords should be entitled to their land back, notwithstanding the tenant's security of tenure, if they genuinely wish to use that land for their own business purposes… or redevelopment… ".

Indeed, this policy was explicitly recognised in the White Paper that preceded the 1954 Act. The legislature had to address the situation where (as the ECHR described it in Karibu Foundation v Norway App No 2317/20 (2023) "the conflicting interests of two sets of property owners are at stake".

55. To this question the legislature gave careful consideration. First, it acknowledged the presence of "goodwill" relating to a tenant's business. In the 1954 Act "goodwill" is a relevant consideration in considering the suitability of alternative premises under s.30(1)(d). Second, it specifically considered the relevance of "goodwill" in the context of the landlord recovering the premises for the purposes of his own business. In the course of debate on 8 July 1954 Lord Silken moved an amendment and said

> "I can understand the case where the landlord requires possession, not to carry on the business of his tenant, but a to carry on his own business.… I do not wish to interfere with such cases, but only with those in which the landlord requires possession only to enter into Naboth's vineyard. The question is: how can we distinguish between the two types of case? How can we deny the tenant the right of renewal in one case but give it to him in the other? I recognise that my amendment goes too far in one direction, and I believe that the provision of the bill goes too far in the other.… Is it not possible to devise a new [ground (g)] to protect the tenant against improper expropriation of his goodwill, but which nevertheless will give the landlord the right to take possession where he genuinely requires it for purposes other than merely capturing the tenant's goodwill?"

The answer given by the Lord Chancellor was that the Government had gone a long way to meeting the case which Lord Silken envisaged by providing that a landlord could not oppose renewal if he had acquired the reversion within five years of the termination date, adding:-

> "I think that goes a very long way, but, of course, I recognise that there may be a rare case in which abuse is possible under this clause. I frankly do not see my way to define the provision so as to meet the case…. I do not see my way either to accept this amendment or to suggest an alternative which would carry out his object…"

Lord Silken withdrew his amendment.

56. Mr Roe KC argued that this does not constitute relevant consideration: there is no reference to A1 P1, and there is no recognition that goodwill constitutes a "possession". I do not accept this. The absence of reference to A1 P1 is understandable given that A1 P1 only came into effect on 18 May 1954. But the balancing of two competing property interests which the protocol requires is very evident. It is correct that nowhere is the label "possession" applied to a tenant's goodwill; but that it was treated as a thing of value is clearly recognised. For me the key aspect is that the substantive issue was specifically considered and a policy decision made by the legislature as to the appropriate means to address the problem (which in my view constitutes a proportionate response to the dilemma). Mr Roe KC submitted that Leadmill's argument did not challenge the policy but simply sought a modification of the policy in a discrete case (albeit one that extended to all other businesses where there was goodwill). In my judgment this requires him to identify

such a discrete case (though not to draft an amendment to the 1954 Act) and to establish that Leadmill falls within such discrete case.

57. The discrete case is submitted to be one where the landlord intends "to carry on essentially the same business as that which the tenant has been carrying on… which would have the result of appropriating for himself the tenant's goodwill that has become attached to the premises" (to quote paragraph 4 of Leadmill's Skeleton Argument). This depends upon an ability to identify what is "essentially the same business."

58. The question arose before the House of Lords in Connaught Fur Trimmings Ltd v Cramas Properties Ltd [1965] 1 WLR 892 (although not in the context of s.30(1)(g) but in relation to s.30(1)(f) and s.37 of the 1954 Act). A quitting tenant was entitled to compensation if at the date when he quit the holding that holding had been continuously occupied "for the purposes of the carrying on of the tenant's business (whether by him or by any other person) for at least five years." The quitting tenant was a manufacturing furrier who had taken an assignment of the lease and certain trade fixtures and fittings (but not any goodwill) from an assignor who was also a manufacturing furrier. His entitlement to compensation depended upon whether the Court read the words "the tenant's business" as referring to a continuation of the assignor's particular business (which the quitting tenant was not doing) or to a continuation of a similar type of business is that of the assignor (which the quitting tenant was doing). The majority of the Court of Appeal held that the quitting tenant was entitled to compensation because he had been carrying on business of the same kind as that of the assignor. The House of Lords reversed that decision and held that the appellant's construction (that the reference was to a particular business) was correct. Lord Guest said (at p.900)

> "But what, in my opinion, is conclusive of the meaning attributed by the appellants, is that the respondent's construction would necessitate an enquiry into the type of business carried on by the tenant. No difficulty arises in the present case, as it is agreed that the same type of business was carried on by the respondents as by [the assignors] - that of manufacturing furriers. The question might easily arise in other cases where the solution would not be so simple. What is the criterion for deciding the type of business? The Act provides none. Are businesses to be divided into broad groups such as retail, wholesale and manufacturing? Or are there to be subdivisions of these groups? If so, how far down the scale does the division to go? What is the type of business of the supermarket? Is it the same type of business as a grocer's or butcher's or wine merchant's? Endless such questions will arise. The respondent's construction would lead to ambiguity and uncertainty whereas the appellant's construction at least provides a definite test."

To the same effect Lord Wilberforce said (at p.903)

> "… The difficulties of reading "the tenant's business" as referring to the type of business are immense. The Act itself gives no guidance as to the criteria by which types of business are to be ascertained and, if the argument were to be accepted, it would be necessary to invent them: but when it is appreciated, from section 23, that the Act applies to all business,

> trades, professions employments and activities it becomes evident that the task of identifying a business by type or class would present insuperable difficulties for the courts…"

In my judgment there is such conceptual uncertainty about "the same type of business" (and *a fortiori* about "effectively the same type of business") as to make the ascertainment of the so-called "discrete case" impossible. There is nothing peculiar to music venues. The same analysis must be undertaken in relation to, for example, hairdressers. By what criterion do you decide whether (to take a stark case) a landlord who has let premises that have been used as an African ladies' cornrow and weave stylists but wishes to recover them for the purpose of conducting therein his business of a Turkish barbers is expropriating "adherent goodwill"?

59. As to the need to establish that the business of MVL17 *is* "effectively" the same as that of Leadmill I do not think that this has been proved. On the assumptions on which the case has proceeded MVL17 will be obtaining possession of a derelict shell which it will comprehensively refurbish to its own specification and use for the purposes permitted by the Planning Acts and in accordance with the licence which it has obtained. The evidence of Mr Madden (in his second witness statement) was that MVL17's business "will also, in any event, be different from that currently operated by Leadmill". It will be part of a touring circuit organised by Electric offering a "one-stop shop" for national and international "bluechip" promoters of national and international tours. This, Mr Madden stated, differs from Leadmill "which promotes almost all events and community initiatives internally." MVL17's business will also operate under a newly-created distinctive brand. This evidence was not challenged in cross-examination. The cross-examination focussed upon the fact that the new business would be operating in a place that was already known as a music venue. Mr Madden acknowledged as much, but said (i) that MVL17 would be dealing with a completely new set of young people; and (ii) that the success of a venue depended on the events which it puts on and how they evolve (rather than location). I accept that evidence. On this state of the evidence I find that although the premises are at present a music venue and will (when MVL17 takes possession) continue to be used as such in accordance with permitted planning use, MVL17 will not be carrying out "effectively the same business" as Leadmill.

60. Accordingly, on this part of the analysis I find and hold

(a) that the entitlement of a landlord to recover premises for the purpose of conducting his business therein serves the public interest in respecting ownership rights;

(b) that the inability of a landlord to do so if he has purchased the reversion to the tenancy within five years before he seeks possession goes a long way towards eliminating the predator who wishes to use those ownership rights to target the tenant's business *per se* though it cannot be 100% successful;

(c) that in so providing section 30(1)(g) strikes a fair balance between the right of renewal and the right of repossession;

(d) that that balance was struck after a proper consideration of the relevant HRA considerations (even though A1 P1 was not named);

(e) that (subject perhaps to compensation matters which were not argued for, and on which I express no view) if and to the extent that the tenant is deprived of any "goodwill" or his possession of it is interfered with then it is so affected subject to conditions provided for by law in pursuit of the public interest identified at (a) and in a way that is proportionate and which balances the competing property interests;

(f) that on the evidence MVL17 will be conducting its own business and will not be taking over and conducting the business of Leadmill (or "effectively" doing so).

61. Having so found and held I shall not embark upon the other questions raised in argument concerning the availability and application of sections 3 and 4 of the HRA 1998. They are purely legal questions in contested territory and can (if necessary) be argued on the facts I have found. I do not consider that *obiter* observations would be helpful.

62. I shall therefore grant the possession order sought, which order will contain the undertaking offered by Mr Madden.

63. I express my thanks to all Counsel for the quality of the written and oral argument.

64. Finally, I note that following the circulation to legal representatives on 11 February 2025 of a draft of this judgment marked "Confidential to the parties. Embargoed" the substance of the judgment was published by the Sheffield Tribune on 17 February 2025. Communicating the substance of a judgment before formal handing down is a potential contempt of court. I should not be taken to imply that legal representatives are at fault.