

Neutral Citation Number: [2020] EWHC 550 (Ch)



**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST**

Claim No. PT-2018-000116

Royal Courts of Justice,
Rolls Building, Fetter Lane,
London EC4A 1NL
Date 13 March 2020

Before

Mr Peter Knox QC
(sitting as Deputy Judge of the High Court)

Between :

BEAUMONT BUSINESS CENTRES LIMITED

Claimant

- and -

FLORALA PROPERTIES LIMITED

Defendant

Mr GUY FETHERSTONHAUGH Q.C. and Ms ELIZABETH FITZGERALD

(instructed by Dewar Hogan) for the **Claimant**

Mr MARK WONNACOTT Q.C. (instructed by Clarke Willmott) for the **Defendant**

Hearing dates: 3, 4, 7, 8, 9 and 11 October 2019

Approved Judgment

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

Introduction and summary

1. In these proceedings, the Claimant (“Beaumont Business”) claims an injunction, or alternatively damages, against the Defendant (“Floral”) in nuisance for the wrongful interference with its rights of light at 80/80A Coleman Street to 63/65 Moorgate, in the City of London. I shall call this “Beaumont’s property”. Save for one building, Floral owns the property immediately to the north of Beaumont’s property, at 67 to 73 Moorgate, and 34 London Wall. I shall call this “Floral’s property”. As the addresses indicate, in each case the properties are an amalgamation of a number of different buildings. The claim arises out of Floral’s building an extension into a lightwell which it owns, and which adjoins Beaumont’s property, between July 2017 and June 2018, and increasing the height of one of the elevations overlooking the lightwell. It has come about as follows.
2. In 2012, Beaumont London LLP, which is related by ownership to Beaumont Business, refurbished and developed the Beaumont property, in particular by altering the windows on its fifth floor and adding a sixth floor. (Save where the distinction matters, I shall use the term “Beaumont” to refer to either entity.) Since then, Beaumont has let out the rooms in the building as high quality serviced offices on tenancies of one to three years.
3. Although Beaumont’s development caused a reduction in light, the then owner of the Floral property did not object to it. However, before Beaumont finished it, Floral agreed to buy the Floral property on 30 October 2012, and shortly afterwards it wrote to Beaumont expressing concern over the loss of light. There was then a meeting between them in November 2012 to discuss the issue.
4. Floral completed its purchase (save of 73 Moorgate, which it completed later) on 31 January 2013. Its original intention was to develop the property into residential units, but after the City of London planning department indicated in September 2013 that this was unlikely to get permission, it decided to develop its property into an apart-hotel. In March 2014, the City of London planning department indicated that this was likely to be acceptable, and on 21 May 2014, Floral submitted its planning application for it.
5. In the meantime, Floral had further discussions with Beaumont to discuss its right of light claim, first in March 2014 (their second meeting), and then in October 2014 (their third), but now in the context of its own plans to develop the Floral property which might involve reducing the light in Beaumont’s property. Floral’s position is that at the October 2014 meeting and subsequently, Beaumont sought to give the false impression that it was prepared to agree a reciprocal arrangement on the issues, when in fact it was not. The reason for this, it is said, was that Beaumont wanted to spin things out and thus reduce Floral’s chance of getting an injunction ordering its (Beaumont’s) sixth floor to be pulled down.
6. On 9 April 2015, Beaumont London sold the freehold of Beaumont’s property to an institutional purchaser based in Luxembourg for £27 million, and on the same day it granted a 15 year lease (with an option to renew for another five, ten or fifteen years) to Beaumont Business. Under a rights of light deed agreed on the same day, it was

agreed that Beaumont London would retain all rights to light claims for increases in height in Florala's property of up to 11.25 metres, and would also have the right to direct to whom any settlement sum should be paid. If the development was higher, then the rights would belong to the institutional purchaser.

7. Florala's case is that both this transaction, and a number of communications in the course of the correspondence leading up to it, show that Beaumont was not genuinely interested in protecting its rights of light from Florala's proposed hotel development, but simply wanted to use them as a means of extracting an extortionate "ransom" payment from Florala.
8. On 1 May 2015, Florala obtained planning permission to use its property (still without 73 Moorgate) as an apart-hotel. The scheme involved (a) building a new massing into part of the lightwell which would come closer to Beaumont's property than the previous elevation, and (b) increasing the height of the elevation at the back across the whole of the lightwell. There were two further meetings between the parties, on 1 December 2015 (their fourth) and 21 March 2016 (their fifth), at which Florala explained the changes it had made to the plans to the part of the scheme looking out on to the lightwell. There is no particular dispute as to what took place at these meetings.
9. On the basis of these plans, the parties' rights to light surveyors (Gordon Ingram Associates and Point 2 Surveyors – hereafter "GIA" and "Point 2") carried out technical analyses of the impact of Florala's proposed development on Beaumont's rights of light on the ground to the sixth floors. On 21 July 2016, they concluded that the "EFZ" loss for the property would be 280.6 square feet, all on the ground to the fourth floors. Their analysis also showed that none of the rooms (save for one, it seems) would move from being what rights of lights surveyors call "well-lit" to "not well-lit", and that practically all of them would move from not well-lit to even worse lit. I discuss these concepts below.
10. On the same day, 21 July 2016, Point 2 for Florala drafted a letter which offered to settle any rights to lights claim Beaumont might have for £155,000. Before sending the letter, however, they asked GIA for Beaumont on 2 August 2016 to whom any payment should be made, to which GIA replied the following day, enclosing the rights of light deed of 9 April 2015 mentioned above, which Florala had not yet seen.
11. This was the start of the problems, because Florala, instead of making the anticipated payment, went quiet on Beaumont, and did not answer six requests from GIA as to what was going on. Eventually, however, on 6 February 2017, Point 2 replied that the effect of the rights of light deed was that Beaumont Business had no rights of light, as they were purportedly all vested in Beaumont London; but this entity had no right to bring a rights to light claim because it no longer had any interest in the property. GIA and Beaumont's solicitors disputed this.
12. In the meantime, Florala acquired 73 Moorgate in August 2016, and obtained revised planning consents in May and July 2017 to use its property as so increased to develop a total of 27 rooms there. It also let the hotel out to the Serviced Apartment Company Limited ("SACO") on a fifteen year lease on 7 December 2018, as was disclosed to Beaumont on disclosure in these proceedings in February 2019.

13. On 1 July 2017, Florala erected scaffolding in the lightwell, and over the course of the next eleven months or so, to early June 2018, it built the proposed extension (in white rendering) in the lightwell and raised the wall at the back as in the plans which showed that this would result in a loss of 280 square feet EFZ. This resulted in one of the rooms moving from “well lit” to “not well lit”, and so in September 2018, it reduced part of the parapet extension at the back so as to make that room still “well lit”. In the result, the total actual loss of well-lit area was agreed between Point 2 and GIA at 228 square feet, and the total “EFZ” loss at 270.4 square feet.
14. As soon as it became apparent that Florala was carrying out these works, Beaumont objected to them, and warned Florala that it was carrying them out at its risk. In particular, in two principal to principal meetings in late August 2017, it said that it would lose rentals of £155,000 a year from the reduction in light that the scheme would cause, which would equate to a capital value of £3.1 million; and it put forward a drawing which showed how the scheme could be cut back a little so as to remove the likely interference with its rights of light. Florala, however, was unmoved and went ahead without answering the proposal for a cutback.
15. On 9 February 2018, while the works were still in progress, Beaumont issued these proceedings seeking an injunction restraining Florala from continuing the development, and claiming damages. This did not identify the scope of any cutback, although it later did so by an amendment made on 23 September 2019.
16. Beaumont did not apply for an interim injunction, but on 11 April 2018 Florala applied for reverse summary judgment on the basis that the claim for a final injunction (as opposed to damages) had no reasonable prospect of success, because the rights to light deed showed, as a matter of fact, that Beaumont was simply seeking to extract a ransom payment from Florala, without any real concern about the reduction in its light. On 12 July 2018, His Honour Judge Hodge Q.C. dismissed this application.

The issues

17. The following issues arise:
 - (1) What was the scope of the prescriptive rights that Beaumont acquired? In particular, did it acquire rights to the ground floor, and to the easternmost window on the second floor of its property?
 - (2) Did Florala’s works cause a nuisance? In particular:
 - (a) What is the legal position when a property which is not well lit becomes even less well lit, in particular in a busy urban environment such as the City of London? Can a claim in nuisance arise at all, and if so, to what extent?
 - (b) What was the extent and effect of the reduction in light?
 - (c) On the evidence, has Beaumont shown that Florala’s works substantially interfered with its enjoyment of the property?
 - (3) If Beaumont has established a nuisance, to what compensatory damages is it entitled?
 - (4) Is Beaumont entitled in principle to an injunction or negotiating damages in lieu, or has it disentitled itself from such relief because this is just a ransom claim being used to extort money from Florala?

- (5) If it is so entitled in principle, to what negotiating damages is it entitled (although strictly this issue arises only if it is inappropriate to grant an injunction, I deal with this point first)?
- (6) Is Beaumont entitled on the facts to an injunction, and if so on what terms? In particular, does it matter, on the question of such relief, that it has not notified SACO of the existence of these proceedings or joined it to them, although the existence of SACO's lease was disclosed to it in February 2019?
18. In the following paragraphs, I shall first set out the facts, because they are important to Florala's case that in reality Beaumont has simply been using its rights to light as a means of extorting money from it. This does involve analysing the course of the parties' dealings, and in particular what happened at certain meetings, in some detail. I do this as the occasion arises in sequence in setting out the facts.
19. I shall then consider the issues in the order I have set out above.

The facts

The parties

20. Beaumont Business is owned as to 50% by Mr Crispin Vaughan and 50% by Mr James Adam, and they are its two directors. Beaumont London is owned as to 49% by Mr Vaughan, as to 49% by a trust for Mr Adam and his family, and as to 2% by a company they jointly own called BPIC (the precise percentages may be slightly different, but nothing turns on this).
21. Florala is a company incorporated under the laws of Gibraltar. Its shares are owned as to 75% by Elrov Holdings (1973) Limited, and as to 25% by two other entities. At all material times, it retained Mr Erel Agmon to act as its advisor on the hotel development, as confirmed by a written agreement made on 21 January 2015.
22. Each of Mr Vaughan, Mr Adam and Mr Agmon gave evidence before me. I accept that each of them gave his evidence honestly, and sought as best he could to answer the questions put to him, although in some aspects, as will be seen below, I find that their evidence was inaccurate.

The properties

23. Beaumont's property, as I have said, runs from 80/80A Coleman Street on its west wing to 63/65 Moorgate on its east. It is an amalgamation of 18th and 19th century buildings which are Grade II listed and are now interconnected. The freehold includes a self-contained retail unit on the ground floor fronting Moorgate, but this is not included in Beaumont's demise.
24. To the north of Beaumont's property, as one goes from west to east, is Armourer's Hall, but after about a third of the way on its northern side it abuts Florala's property, and continues to do so until one gets to their respective eastern points at 63/65 Moorgate (Beaumont) and 67 Moorgate (Florala).

25. Florala's property is now a single site which consists of 34 London Wall on its western and northern side (where it faces London Wall), and 67, 69 and 71 Moorgate on its eastern side. The buildings were built in the 1840's and the Moorgate buildings are Grade II listed. In addition, in August 2016, as I have mentioned, Florala acquired a long lease of 73 Moorgate, which is on the corner of Moorgate and London Wall. As a result of that acquisition, it effectively owns all the buildings on and near the corner of London Wall and Moorgate. The buildings have a basement, a ground floor and four upper floors. The upper floors were used as offices before Florala bought them and converted them into a hotel. The ground and basement floors were and still are used as commercial shop units.
26. At the point where Beaumont's property joins the southern point of Florala's, there is a lightwell which belongs to Florala. This lightwell continues until one gets to the back of 63 and 65 Moorgate, after which the buildings share a party wall up to the front of the buildings at those two addresses facing on to the road. The measurements of the lightwell are not, so far as I can tell, in evidence, but it is more or less rectangular, overlooked on each floor on Beaumont's side, first by one east facing window (on a column that juts out into the light well) and then by five north facing windows. The windows measure 1.25 metres by 1.9 metres. I would estimate, from the various small scale plan drawings in bundle G, that the lightwell measures about 10 metres by 4 metres.
27. As I have said in the summary, it is Florala's building opposite and into this lightwell which has given rise to the dispute in this case.
28. Because of the rather complicated facts of this case, I must also mention the layout on the other side of Beaumont's property, that is to say, its south side.
29. On this side, there is a series of interconnected buildings that also go from west to east, starting at 82 Coleman Street and finishing at 55 Moorgate. I shall call this, as it was called at trial, the "Kajima property", and the development which took place at it the "Kajima development" (the property is being developed by Kajima Properties Europe Limited). The two properties (Beaumont and Kajima) share a party wall as one goes east until a space in the middle, which again is a lightwell, but triangular in shape and somewhat smaller than the Florala lightwell. This lightwell is opposite rooms 1.03 and 1.04 (going up to 6.03 and 6.04 at the top) at Beaumont's property, and one can also see into it from rooms 1.02 to 6.02 of Beaumont's property. I shall call this the Kajima lightwell.
30. The properties are located in the centre of the City of London, and they have strong transport links, with Moorgate Station about 0.1 miles to the north and Liverpool Street Station about 0.4 miles east. They are all about 150 metres away from the Bank of England, Royal Exchange, and Guildhall.

The site visit

31. At the start of the trial, I attended a site visit with Mr Fetherstonhaugh Q.C. and Mr Wonnacott Q.C.. We were taken around Beaumont's property by Mr James Adam, and around Florala's property by Mr Erel Agmon at about 10 am to noon on the first day

fixed for the trial 3 October 2019 (I describe the roles played by these gentlemen in the relevant events below). The day was bright but slightly clouded over. We went round each of the rooms in Beaumont's property, and in particular those affected by the reduction in light. My general impression was that there was little natural light coming into the rooms on the ground floor, but the position improved floor by floor until one reached the fourth floor. This was still not particularly well lit, but better than the floors below. In each case, one would need artificial lighting to light up all the room properly. As for Florala's property, this had been built to a high standard and came across as a smart, well-finished, hotel.

The events leading to the claim

32. The facts in large part appear from the correspondence and documents, and, save on a few points, they are not in dispute. The main point of contention is, what were Beaumont's motives in behaving as it has. Was it genuinely concerned about the reduction in light; or has its real motivation been, as Mr Wonnacott Q.C. contends, to extract a ransom payment from Florala?

Beaumont's acquisition and development of the Beaumont property

33. Beaumont London acquired the freehold of the Beaumont property in, as I understand it, 2011 (the precise date does not appear from the papers). As I understand it, the property was then leased to, developed by and run by Beaumont Business.
34. From 2011 to 2012 Beaumont carried out refurbishment works to create serviced offices. This included the amalgamation of the Coleman Street and Moorgate buildings at all levels (excluding a retail unit on the ground floor fronting Moorgate, which remained as it was), and the addition of a sixth floor and alterations to the windows of the fifth floor. The total cost, including construction and fitting out, was about £6.2 million. As a result, Beaumont's property now consists of about 26,500 square feet of high specification and fully furnished office space and ancillary accommodation, arranged over the lower ground, ground and six upper floors, together with the self-contained retail unit. The principal entrance to the serviced offices is from 80/80A Coleman Street, leading to a marble-floored reception area with a feature fireplace.
35. The effect of Beaumont's works was to interfere with the light at Florala's property, which at that point was owned by Luri 5 UK Property Fund plc ("Luri"). By November 2011 this was the subject of discussions between Beaumont's and Luri's respective rights of light surveyors, Beaumont's being Mr Jerome Webb of GIA (Mr Webb later gave evidence at trial about the effect of Florala's later development). By this time, Luri was thinking of selling the property, and it did not object to Beaumont carrying out its development. In an email to his counterpart of 29 November 2011, Mr Webb contended that Beaumont's development would not make much if any difference to the light or to the quality of the office space at 34 London Wall (which appears to have been the part of the Florala property affected by the Beaumont development).
36. Although the evidence is sketchy, it is clear that there were discussions about Beaumont paying Luri "*modest compensation*" (as Mr Vaughan put it). Further, I find that things went further, and that Beaumont did actually agree in principle to pay financial compensation in these discussions, but not in any particular amount. This is apparent

from Mr Adam's later email of 22 November 2012 to Mr Agmon, in which he said: "*... the financial compensation we had agreed to pay to the previous owners will now be negotiated with you*".

37. Before carrying out this development, Beaumont also had a discussion with the owners of Armourers Hall, and reached an understanding that the latter would not object to the development, on the basis that Beaumont would not object to a possible development of Armourers Hall to build a 10 storey building. Mr Vaughan said, and I accept, that he was content to do this because the chances of planning permission for such a development were non-existent. This was later formalised in a mutual deed of release of rights of light on 9 June 2014.

Floralas acquisition of the Florala property, and the first meeting between Florala and Beaumont

38. On 30 October 2012, Florala agreed to buy from Luri all the freeholds in the Florala property, which it subsequently completed on 31 January 2013. (At the same time, it agreed to buy from Luri a long lease of 73 Moorgate, but as I have said that completed only a few years later.) Its intention at this point was to redevelop the buildings into residential property.
39. Before completion on 31 January 2013, Florala's solicitors (Forsters) wrote to Mr Webb on 6 November 2012 expressing concern about the impact of Beaumont's development, and asked for technical studies on the light affected, and reserved Florala's right to take steps to protect its legal position. By this stage, Beaumont's refurbishment was, as I accept, "*substantially complete*" as Mr Vaughan put it, but he was nonetheless concerned by this threat. (Mr Agmon said that at this stage only the steel structure for the fifth and sixth floors was up, but I prefer Mr Vaughan's evidence in the light of Howard Kennedy's letters referred to in the next paragraph; and anyway nothing turns on the difference.)
40. By replies of 14 and 16 November 2012, Beaumont London's solicitors (Howard Kennedy) replied that that "*the construction of the envelope of the development has been completed for some time*", as Florala must have been aware when it exchanged contracts. They contended that the development's impact on light at Florala's property was small in real terms, and anyway it was far too late now for an injunction.
41. On 20 November 2012, Mr Adam and Mr Agmon had a meeting to discuss the issue, the first of a number of meetings they had about light. At this meeting I accept that, as Mr Agmon says, he raised the question of a mutual release of rights to light, which Mr Adam rejected. I also find that at this meeting Mr Adam said, as is apparent from his emails to Mr Agmon of 21 and 22 November 2012, that Beaumont would be prepared to pay financial compensation to Florala; but that Mr Agmon did not accept that this would necessarily be sufficient, as is apparent from his email to Mr Adam the next day.
42. I reject, however, Mr Agmon's evidence that Mr Adam said that he had experience of rights of light matters at another building, and that as a result of something he had said, Beaumont had lost out on a compensation payment there. There is no note of this conversation or record of it in Mr Agmon's short email of 21 November 2012 about the meeting, and it is unlikely that Mr Adam would have said such a thing, because if

Beaumont really had lost out on such a payment previously because of something he had said, he is unlikely to have made such an unguarded comment on a first meeting with Mr Agmon. I prefer Mr Adam's evidence that he said he was adamant that Beaumont would not release its rights to light (T2/60), and that if he said anything about light issues with other parties, this would have been about discussions with representatives of the Kajima property when preparing for Beaumont's redevelopment.

43. Shortly afterwards, by early December 2012 or at least by January 2013, Beaumont completed the building works to create the sixth floor, save for the internal works of fitting out and decoration, and shortly afterwards it began letting out its offices as serviced offices to short term tenants. (Mr Agmon disputed that the works had finished by December 2012, but I accept Mr Vaughan's evidence on this. In October 2014, Floralá's solicitors did not dispute Beaumont's solicitors' assertion in their 13 October 2014 letter that the entire development had been completed by the time Floralá acquired the property.)
44. By now, Mr Webb had provided to Floralá's rights of light experts, Delva Patman, an analysis which had been prepared by GIA's predecessor Messrs G.L.Hearn, but Floralá was concerned that this analysis was incomplete and therefore inaccurate.
45. Accordingly, on 21 December 2012 Mr Agmon asked Mr Adam for an analysis based on the correct facts. This was not provided for a considerable time, despite five chasing letters from Delva Patman and Mr Agmon to GIA from 9 April 2013 to 23 July 2013. However, GIA eventually provided one on 22 August 2013. Delva Patman advised Mr Agmon that these showed that there were at least seven rooms which had possibly suffered an actionable infringement to their rights to light; that the "EFZ" loss was 277.4 square feet; and that this "EFZ" figure, on the traditional method used by rights of light surveyors, would result in compensation of £31,872 based on a book value of £10,624. (I discuss what is meant by "EFZ" and the nature of the calculations based on it below.) It also noted that the "development gain cut back" method of compensation might yield compensation too. This analysis was at some point provided to GIA (see Mr Agmon's letter of 12 March 2014).
46. Despite this, Floralá did not make a demand on Beaumont, or pursue legal proceedings. It decided instead, as Mr Agmon put it in his first witness statement (and which I accept), that it was better to resolve matters through discussions. However, as is apparent from the history below, it still wanted to use its claim as a lever to get Beaumont to agree to its own development. Further, its own plans for the Floralá lightwell meant that it would be altering, at least in some respects, the windows in respect of which it might have rights of light.

Floralá's development plans, and its second meeting with Beaumont

47. As I have said, Floralá's initial intention was to develop the buildings into residential units. However, at a pre-application planning meeting with the City of London planning department on 11 September 2013, it became apparent to Mr Agmon that Floralá would not be given permission for such a development, and that an "apart-hotel" within C1 class use with the addition of a fifth floor might be acceptable. After obtaining a report from Allsops in January 2014 which showed the difficulties of developing the premises satisfactorily into offices (including the possibility of building 10 storeys on its

Moorgate wing), Mr Agmon decided to go along with this suggestion, and instructed Henley HaleBrown Rorrison (“HHbR”) architects to put together a proposal for an apart-hotel in the buildings (but still excluding 73 Moorgate). On 12 March 2014 HHbR duly provided a scheme for 25 hotel rooms, with five rooms over five floors (including a new fifth floor) over the buildings which Florala then owned.

48. On the same day, 12 March 2014, Mr Agmon wrote to Beaumont London noting that GIA had still not commented on Delva Patman’s analysis, and continued:

“I thought it would be worth asking whether you would be interested to start a discussion on the mechanism in which right to light injuries would be settled between our buildings – both your injury on our building, but also potential future injury from our buildings on yours.”

49. A second meeting took place between Mr Agmon and Mr Adam on 26 March 2014. By now, the City of London planning department had told Mr Agmon a few days earlier that a change in use to hotel use would be acceptable in principle. At this meeting, Mr Agmon informed Mr Adam of the proposed scheme to develop the hotel and said he wanted to reach agreement with Beaumont before finalising it for the planning application. Mr Adam, he says (and Mr Adam did not contradict this), did not offer much engagement, save to ask for the covering of a louvred façade in the design that was to face Beaumont’s property to be changed, to which he (Mr Agmon) agreed. Later that day, Mr Agmon emailed Mr Adam to say that he would like to keep an open dialogue with Beaumont and to address any potential concerns.
50. About two months later, on 21 May 2014, Florala submitted its application to the City of London for the development of the 25 bedroom hotel (but still excluding 73 Moorgate) along with some associated works, including the alteration of the roof level at 34 London Wall. On the same day, it also applied for listed buildings consent. Neither Mr Vaughan nor Mr Adam could recall seeing the formal notice for the application. However, it was not until a year later, on 1 May 2015, that planning permission was given, because the proposal had to overcome objections from English Heritage and the City of London’s senior officers, which required the re-design of the scheme in October 2014 and the removal of the proposed fifth floor.

Third meeting between Florala and Beaumont, in October 2014

51. In the meantime, Florala reminded Beaumont by letter from its solicitors (now Clarke Willmott) on 9 October 2014 that all its rights in relation to the infringement of its right to light were preserved. This was followed by a third meeting, this time between Mr Agmon and Mr Vaughan, on 16 October 2016, along with the parties’ respective rights to light experts (Mr Dan Wade of Delva Patman, and Mr Webb of GIA).
52. I dwell on this meeting for a while because it is important to Mr Wonnacott Q.C.’s argument that Beaumont was deliberately spinning things out by pretending to Florala that there was a deal to be done until it was too late for Florala to apply for an injunction.
53. At this meeting, according to Mr Agmon, he and Mr Wade offered either to pay an agreed lump sum to resolve the parties’ respective claims, or to agree a financial

formula that translated light injury into financial compensation, taking into account future impacts of the loss of light on both their properties. They also corrected Beaumont's apparent misapprehension that the new massing for the hotel would be right on the boundary line next to Beaumont's property. However, Mr Vaughan was not prepared to agree. After the meeting, Delva Patman made a detailed proposal, but GIA rejected it and matters went no further.

54. This evidence about the meeting itself, which was in paragraph 96 of Mr Agmon's first witness statement, was originally redacted, but after his cross-examination (in which, as explained below, he understandably, given the questions, referred to negotiations on another occasion) it was admitted into evidence. Further, I accept it, notwithstanding Mr Vaughan's denial in cross-examination that there was any discussion at this meeting about a reciprocal agreement (T2/30-31). There was no application to recall Mr Vaughan to deal with it, and anyway, it makes sense that Mr Agmon would have wanted to make such an offer, and it is not surprising that after more than five years Mr Vaughan was unable to recall the conversation at trial.
55. Further Mr Webb *was* cross-examined about the meeting against an email sent by one of his assistants not long afterwards on 15 December 2014 looking for cover against Floralá's rights to light claim, which said that it was "*likely a reciprocal agreement will be reached*". When this was put to Mr Webb, he said, and I accept, that he did not think at the time that the email was misleading, because Mr Vaughan was still looking to find an equitable solution to the problem (T3/16-17). I also accept his evidence, which is consistent with Mr Agmon's evidence, that Mr Vaughan "*made it very clear that the impact to the light was something which was of considerable concern to [Beaumont]*", albeit acknowledging that there had been some impact on Floralá's property (T3/14).
56. The one qualification on my acceptance of Mr Agmon's evidence of this meeting is that I do not accept that Mr Vaughan said or gave the impression at it that he "*had no desire to agree anything in the meeting*". That is inconsistent with Mr Webb's evidence that Mr Vaughan was prepared to consider an equitable solution. That he rejected the actual proposals put forward, and said that Beaumont would not give away its rights of light, is not inconsistent with that.
57. Finally, on this meeting, I do not accept that at this meeting Mr Vaughan was stringing Mr Agmon along by saying that it was likely that a reciprocal agreement would be reached. First, I do not accept that Mr Vaughan actually said or suggested that it was "*likely*" that a deal would be done, as opposed to leaving the door open for a deal if a satisfactory one was put forward: indeed Mr Agmon's evidence is inconsistent with his having said a deal was likely. Second, Mr Vaughan was an honest and impressive witness, who gave his answers thoughtfully; and I accept, for the reasons I discuss in detail below, that he and Mr Adam were genuinely concerned at the prospect of interference with Beaumont's rights of light.

The sale of Beaumont's property to Dereif

58. In October 2014, Beaumont London put Beaumont's property on the market with Knight Frank (on the 15 October) and JLL (on 20 October), looking for offers in excess of £26 million, but on the basis that it was to be let back by the purchaser to Beaumont Business on a new 15 year lease subject to five yearly rent reviews at an initial rent of

£1.3 million (along with rents from the shop on the ground floor). This led to an offer being made by an investment fund known as Dereif-Sicavis (“Dereif”) based in Luxembourg on 20 November 2014, which in turn led to draft heads of terms being agreed on 1 December 2014, at a price of £27 million, but with the rent under the lease back to Beaumont Business to be increased from the proposed £1.3 million to £1.42 million.

59. In the knowledge that Beaumont London was trying to sell the property, Florala resumed its prodding on the rights of light, writing through Clarke Willmott on 9 December 2014 that Beaumont’s denial of liability was unsupportable, and that “*we are instructed to take the matter further and will collate the necessary expert evidence and engage Counsel for this purpose. Please advise if you have instructions to accept service on behalf of your client*”. Mr Agmon accepted (T2/102) that Beaumont would have to tell potential purchasers about the claim; and he accepted (T2/94), albeit, mistakenly, in relation to Clarke Willmott’s similar letter of 9 October 2014, that:

“It was an effective time to write this letter because a sale of the property, obviously, means that there’s a different owner ... We would have lost effectively all the communication we’ve had up to this point. But it also – and it’s not by chance, it’s also the point in time in which Beaumont and GIA stopped responding to Delva Patman’s communication, so they have completely ignored us. So for both reasons this is an effective time, I agree.”

60. To similar effect, on 12 December 2014, Clarke Willmott wrote direct to Mr Webb fully reserving Florala’s position, and alleging a possible misrepresentation by Mr Webb or GIA in the technical analysis he was said to have provided in 2012.
61. The correspondence had its obvious effect for a while, because Beaumont London had to tell Dereif about the dispute, as it did by letter of 16 December 2014; and it also had to take out “catastrophe cover” against the claim (i.e. in case a court ordered it to pull down part of its building). In response, on 16 and 23 December 2014, Dereif expressed concern about the dispute (in particular about the alleged misrepresentation), and about whether the proposed cover would be sufficient. Beaumont also obtained an estimate that it would cost about £600,000 to cut back the sixth floor and result in a loss of £1,500 per square foot.
62. In the event, on 13 February 2015, Howard Kennedy proposed to Dereif’s solicitors (Olswang LLP) an arrangement under which the deal would remain more or less the same as before, but Beaumont would be responsible for settling Florala’s claim, but with the right to keep any compensation payable by Florala in the event Florala’s proposed building interfered with the rights of light at Beaumont’s property. Olswang LLP replied, however, that Dereif was not prepared to agree that any compensation due from Florala should stay with Beaumont Business. Beaumont, however, was not prepared to agree to this, and the deal with Dereif stalled for a while.
63. Beaumont then entered into negotiations for a while with Salamanca Group Holdings (UK) Limited (“Salamanca”), which was represented by a Mr Koutramanos. Mr Koutramanos was prepared to let Beaumont keep the net receipts from any right to light negotiation (heads of terms to this effect were agreed on 2 March 2015); but he was

concerned by the threat of an injunction, and he eventually pulled out. As Mr Vaughan explained in cross-examination (T2/37):

“We all went and stood on the roof of our building and his agents went to great detail to explain how the neighbouring building was likely to impact on ours. We looked at the drawings prepared by the defendants and he was very concerned about the impact of their building on the building – our building he was considering and he dropped out”.

64. On 11 March 2015, negotiations were resumed with Dereif, and on 9 April 2015 a series of agreements was entered into, as follows:

- (1) Beaumont London leased Beaumont’s property (less the shop unit) to Beaumont Business for a new term of 15 years, with an option to renew for five, ten or fifteen years, and Beaumont Business surrendered its current lease;
- (2) Beaumont London agreed to sell Beaumont’s property to Dereif for £27 million;
- (3) Beaumont London, Beaumont Business and Dereif entered into a rights of light deed.

65. Under the rights of light deed, it was agreed that Beaumont London would retain the benefit of all rights to light claims for increases in height in Floral’s property of up to 11.25 metres. If Floral built only to this extent, then Beaumont London had the right to settle the claim and to direct to whom the settlement sum should be paid. I discuss this deed of settlement below in considering whether Beaumont by its conduct disentitled itself from an injunction. Suffice to say for the moment, the practical effect of this agreement was that Beaumont, not Dereif, had the right to settle with Floral and to keep the proceeds when the Floral property was converted into a hotel, because this did not increase the property’s height by more than 11.25 metres.

Does Beaumont’s correspondence in the period of the sale to Dereif show that its only real interest in its rights of light was to extract a ransom payment from Floral?

66. Mr Wonnacott Q.C. cross-examined Mr Vaughan on the correspondence relating to the sale of Beaumont’s property in support of Floral’s “ransom” argument I have mentioned above.

67. Thus, on 16 December 2014, Howard Kennedy sent an email to Olswangs saying:

“We consider that the adjoining owner is using the potential sale of this building to require a quick resolution. Our clients do not believe that this is in the best interests of either our client or yours and I understand that both agents have been discussing the matter.”

68. However, I accept Mr Vaughan’s evidence that this was because he took the view, in my judgment understandably, that Floral was trying to “*curmudgeon*” (presumably meaning cudgel) Beaumont into a quick deal to sell its rights of light (T2/34). A forced sale made under such pressure would obviously not be in Beaumont’s interest, and there was nothing sinister in wanting to avoid this.

69. Next, on 9 March 2015, Beaumont's real estate consultants sent to Salamanca's agents an email which discussed an offer to pay £100,000 that had apparently been made by Florala to settle the rights of light dispute, and concluded:

"Let us have a further conversation once you have spoken to Mr Koutramanos. This really is not something that should cause an issue. Moreover, Beaumont have given their assurance that they will finish off any future negotiations."

70. The suggestion was that Mr Koutramanos did not like Beaumont's requirement that it should keep the proceeds of any rights to light claim, but Beaumont was so keen on keeping them (i.e. to extract a ransom payment) that it was prepared to lose him, or rather Salamanca, as a purchaser. However, I accept Mr Vaughan's evidence that Mr Koutramanos was concerned at the rights of light problem as a whole, including Florala's threat of applying for an order for the cutting back of the sixth floor of Beaumont's property (see the evidence above); and that at this point, what he, Mr Vaughan, was envisaging was that it might be possible to consider Florala's revised plans for the hotel and reaching a deal on the basis of a *de minimis* infraction of Beaumont's rights to light (T2/40-41). This, therefore, is what the "negotiations" in the email refer to, because, as I have found above, Beaumont had not closed the door to further discussions at the October 2014 meeting.
71. Third, I also reject a similar argument advanced by Mr Wonnacott Q.C. arising out of the same 9 March 2015 email, which said that Beaumont had not objected to Florala's proposed development "*not least as the Rights to Light negotiations will act as a natural handbrake*". This, Mr Wonnacott Q.C. suggested, showed that Beaumont deliberately did not oppose Florala's planning application, so as to make sure that it got through and then Beaumont could hold Florala to ransom afterwards by slowing everything down in negotiations. But I accept Mr Vaughan's evidence that one does not automatically object to planning applications in the City (T2/43); and that his intention was to use Beaumont's rights to light as a "lever", rather than as a "handbrake", in order to control Florala's development, in particular its proposed massing in the lightwell (T2/41-42).
72. I should add in this context that I accept Mr Adam's evidence on the "ransom" point. Mr Wonnacott Q.C. put to him (T2/78) that the longer Beaumont dragged out the negotiations, the better its position became because it reduced Florala's chances of getting an order for a cut-back of Beaumont's building. He said (T2/78):

"That was not the strategy. It never even entered my head."

Florala's initial steps to convert its property into a hotel

73. In the meantime, by letter of 30 January 2015, Mr Agmon recommended to Florala's board of directors that the upper floors of its property should be converted into hotel use. His points included:
- (1) The buildings were in a "*very poor state, and the space and amenities they offer are highly compromised and do not suit today's City office occupiers*";
 - (2) The total cost of redeveloping the upper floor into a four floor/20 bedroom hotel was estimated at £5 million (by now the City of London had said it would not

- approve the proposed fifth floor, hence no doubt the reduction to 20 bedrooms on just four floors);
- (3) The financial rationale for redeveloping the upper floors into a hotel was exceptionally strong; there was “*a massive contingency buffer*” to cover unforeseen costs or events; and the redevelopment was consistent with Florala’s long term investment strategy for the property.
74. Florala’s board approved the proposal, and the acceptance of a proposed loan for it of £7.5 million, on 4 February 2015. Florala then obtained planning consent, as I have said, on 1 May 2015, but just for four floors for a scheme which involved, as said in the introduction, building in the lightwell and heightening the wall at the back.
75. On 1 December 2015, Mr Agmon and Mr Vaughan had a further meeting (the fourth between the parties), at which Mr Agmon explained, along with a couple of other minor points, that the proposed fifth floor had now been removed from Florala’s development. According to his evidence (which I accept, Beaumont having adduced none to the contrary), Mr Vaughan expressed concern that the development would negatively affect the fifth and sixth floors of Beaumont’s property, which commanded the highest rents; to which he, Mr Agmon, replied that he would be happy to consider any comments or design changes. It would appear from Beaumont’s subsequent letter of 27 January 2016 that at this meeting (or around this time) Mr Agmon provided to Beaumont the details of the scheme which had received planning consent.
76. Florala began the stripping out for its building work in early January 2016. On 27 January 2016, Mr Vaughan wrote to it that Beaumont considered its rights of light to be “*of paramount importance*”; and that it objected to Florala’s developing its property in any fashion which would interfere with its rights of light. The letter reserved the right to issue injunctive proceedings immediately and without further notice.
77. At some point after the 1 December 2015 meeting, Florala re-designed its plans, resulting, Mr Agmon said (and I accept), “*in significant changes to the back elevation of the consented scheme*”. At a further meeting (the fifth), this time with Mr Adam on 21 March 2016, Mr Agmon presented this revised scheme, which included a reduction in the massing in the lightwell. Mr Adam made no substantive comments.

The agreement between the parties’ rights of light surveyors, and subsequent correspondence

78. From April 2016 to July 2016, the parties’ rights to light surveyors (still Mr Webb for Beaumont, but now Mr Hood of Point 2 for Florala) carried out technical analyses of the impact that Florala’s proposed development would have on Beaumont’s rights of light: that is to say on the light in the rooms on the ground to sixth floors overlooking the Florala lightwell. This resulted in a technical analysis of the light that would be lost being agreed between them on 21 July 2016, which showed that the total “EFZ” loss for the property would be 280.6 square feet, all on the ground to the fourth floors.
79. On the same day, Point 2 drafted a letter to GIA saying that the EFZ loss, on a yield of 4.5%, would equate to a total book value loss of £31,178. It continued:

“We wish to advise on an expressly open basis that our client is willing to make a full offer of payment of **£155,000** (i.e. circa 5x uplift of book value) compensation for any potential interference to your client’s light due to [the development into the lightwell].

80. This letter, however, was not sent (it was produced by Florala on disclosure). But it is, in my judgment, of some importance, for the reasons I explain below.

The dispute begins

81. So far, it is clear, in my judgment, that Florala had acted, and was intending to act, in a neighbourly way, and with respect for Beaumont’s legitimate interests. But the position becomes more complicated after this.
82. The problem started with Point 2’s email of 2 August 2016, which asked GIA to confirm the legal entity that might have the benefit from a right to light payment: evidently at this point Florala was prepared to make such a payment (as shown by Point 2’s draft of 21 July 2016). GIA replied the next day, sending the rights of light deed agreed with Dereif described above, and saying that “*our client*” had retained the rights of light in it. Mr Agmon, as he put it in his first witness statement, then took legal advice on this deed “*so that we could make the right offer to the right party on the right basis*”. I accept that he did this.
83. So far so good, and indeed things got better on 25 August 2016 when Florala acquired the 125 year lease of 73 Moorgate for £1 million, so it could now join this property to the others and use the whole corner of Moorgate and London Wall for its proposed hotel. The necessary planning and listed building consents, with some amendments, were in due course given to develop an extra six hotel bedrooms using 73 Moorgate on 1 May, 25 May 2017 and 11 July 2017. (None of these affected Beaumont’s property, as 73 Moorgate was not visible from it.) But in the meantime, things started to go wrong.
84. From 7 September 2016 to 20 January 2017, GIA sent to Point 2 six unanswered letters (save for the occasional acknowledgment) asking for details of Florala’s proposed amended scheme which would not interfere with Beaumont’s rights to light.
85. Eventually Point 2 replied, on 6 February 2017, that Florala had reviewed “*the ownership structure*” of the Beaumont property, and whether there was any basis for a claim against it. The letter continued:

“What this reveals is that your client, Beaumont Business Centres Limited, is not able to maintain any kind of claim against our client as it seeks to [do]. As you are aware a deed relating to the rights of light enjoyed by the building was entered into in April 2015 at the same time your client took its 15-year lease. The deed looks to give the seller, Beaumont London LLP, the right to light after the sale although that is not possible as a matter of law because it no longer has any interest in the building. Without that interest the seller no longer has a claim it can legitimately protect. A Court will not therefore allow your client to try and ransom Florala Properties by granting an injunction when under the terms

of the deed it is required to deal with any rights it may have as the seller requires and pay any compensation to it.”

86. And then:

“Whilst this would leave my client free to build in any way they see fit right up to your client’s boundary, they have no desire to be unneighbourly at all and you will note that further to your client’s comments that the scheme has been adapted to respect your client’s views.

My client’s objective is to build out their planning consent but is keen to preserve good neighbourly relations and is happy to explore construction detail which is to their mutual benefit. Given that Right to Light is not a point of contention, it might perhaps be best if our respective clients met to have a constructive discussion about design and build detail”.

87. On the same day (6 February 2017), Florala entered into an agreement to lease the Florala property for 15 years to SACO, giving the latter the right to demand further rooms at the same rent per room as the existing rooms (permission had yet to be given for the development of 73 Moorgate).
88. By reply of 1 March 2017, Mr Webb replied to Point 2 disputing its assertions, and saying that the rights of light deed simply passed the benefit of those rights between each party with a different interest in the property. He reiterated that Beaumont gave no consent for its right to light to be infringed, and that if construction on site were to begin, injunction proceedings would be commenced immediately.
89. Beaumont Business’s solicitors (now Dewar Hogan) followed up with a letter to Florala on 20 June 2017, saying that it was not clear what Florala’s proposals now were for the development or what effect they would have on the light at Beaumont’s property. They asked for *“details, including copies of relevant drawings”*. They also noted that scaffolding had recently been erected on the public footpaths in front of the Moorgate and London Wall frontages of Florala’s property, and asked to be told its purpose. In particular, they emphasised that Beaumont would not tolerate any interference with its rights; that this was not an *“opening gambit with a view to negotiations”*; and that if Florala did start works which interfered with them *“please be aware that you will do so at your own risk, and that our client will take all necessary steps to protect and preserve those rights of light”*, including seeking an injunction.
90. In 30 June 2017, Dewar Hogan sent a chasing letter, noting that Florala had now started erecting scaffolding on the roof of its building, and asking again for an explanation of what was going on.
91. In early July 2017, Florala erected scaffolding in the light well next to the north flank of Beaumont’s property, and started works there.
92. Correspondence then followed throughout July and the first part of August 2017 between Clarke Willmott and Dewar Hogan, which can be summarised as follows:

- (1) By reply of 7 July 2017 to Dewar Hogan's 20 and 30 June 2017 letters, Clarke Willmott provided no further details, but simply said that the planning permission Florala had for its development was a matter of public record; and it asserted (taking a different line from that previously taken by Point 2) that given that Beaumont Business had to pay over any compensation to Beaumont London, it was very difficult for it to say that the rights of light were so important to it.
- (2) On 21 July 2017, Dewar Hogan repeated their request for details and drawings of the development now proposed, noting that amendments had been made to the scheme for which planning permission had been obtained on 1 May 2015. They reminded Clarke Willmott again of the importance Beaumont attached to the light at its property, and again threatened proceedings.
- (3) On 28 July 2017, Clarke Willmott said, by reference to a chronology since 1 May 2015, that Beaumont had always been kept up to date about the proposed development; and they provided the most recent amendments to the planning permissions, along with a CD received from Florala's contractor which confirmed the works being carried out. They also said that the rights of light deed showed that *"any rights to light infringement will be dealt with by way of compensation being negotiated and sought from our client and a Deed which confirms that once any compensation is secured, it will belong absolutely to the Seller"*. That, it was said, showed that rights to light was not as important to Beaumont Business as it was seeking to assert. They added:

"Given that your client's surveyor asserts that any construction by our client will be met with injunctive proceedings, your client has left our client with no choice but to either abandon the development entirely, or proceed with the development based on its own legal advice as to the merits of the threat of injunctive proceedings."
- (4) By a detailed reply of 11 August 2017, Dewar Hogan disputed that Beaumont had been kept properly up to date about Florala's plans; and that the rights to light deed made any difference to the position. In answer to Clarke Willmott's assertion that Florala had no choice but to abandon the development or to continue it, they said, in my judgment pertinently:

"A third choice which has always been available to your client, is to develop its property in a way which will not result in any interference with our client's rights of light."

The principal to principal meetings on 22 and 31 August 2017

93. There followed two important "principal to principal" meetings on 22 and 31 August 2017 between Mr Vaughan and Mr Agmon, set up at Dewar Hogan's suggestion in an email of 1 August 2017. These were without prejudice, and so Mr Agmon's account of them in his first witness statement had been redacted (along with his account of what had happened at the third meeting in October 2014 mentioned above). However, it was put to him by Mr Fetherstonhaugh Q.C. in cross-examination that Mr Vaughan never gave any indication that Beaumont would be prepared to give up its rights to light (T2/95). After I too asked a similar question, which Mr Agmon quite properly hesitated to answer because of the redactions in his witness statement, Mr Fetherstonhaugh Q.C. (with Mr Wonnacott Q.C.'s consent) eventually pursued his question, to which Mr Agmon replied that Beaumont did indeed give such an indication *"multiple times"*, in particular *"Three categorically"* (T2/98). He then gave evidence that on two occasions,

Mr Vaughan had said before the litigation that Beaumont would give up its rights in return for £3.1 million, which it had justified by a spreadsheet (T2/99-100).

94. This resulted in paragraph 96 (which dealt with the October 2014 meeting discussed above) and paragraph 153 (which dealt briefly with the two August 2017 meetings) of Mr Agmon's first statement being admitted by agreement into evidence on the third day of trial, along with the related correspondence and the spreadsheet he had mentioned. Paragraph 153 was not that illuminating, because it said only that: *"In retrospect, it became clear that those meetings were not intended to seek a resolution of the rights of light matters on reasonable commercial grounds but rather to threaten Florala with an unrealistic high value legal claim"*.
95. More importantly, Beaumont's without prejudice letter of 29 August 2017, signed by its finance director Mr Simon Case, sent after the first of the two meetings, reiterated why its rights of light were so important to it (i.e. it provided high class serviced office accommodation on short term lets of one to three years, and *"as a high end operator, the quality of the light is especially important to its clients"*, so any impact would have an immediate and lasting effect on the rents it could achieve). It attached a draft calculation of the likely impact of Florala's development, which calculated the loss of annual rent from the offices that would be affected at £155,000 a year, which at a yield of 5% would result in a capital loss of £3.1 million. The offices in question were said to be the basement, ground floor, and the first to fourth floors facing the lightwell.
96. This was indeed the figure which Mr Agmon had mentioned in cross-examination, but the letter was not, in my judgment, a demand for £3.1 million as the price of Beaumont giving up its rights, but an explanation of why light was so important to it, with a calculation of the loss which Mr Vaughan (rightly or wrongly) thought Beaumont would suffer as a result of the interference Florala's development would cause.
97. After Mr Vaughan's and Mr Agmon's further meeting on 31 August 2017, Beaumont (again by Simon Case) on 7 September 2017 sent a copy *"of the cutback which Crispin discussed with you"*, prepared by GIA, showing the elements of Florala's development which would require removal to avoid any infringement of Beaumont's rights of light. In essence, this involved cutting back the white rendered building so as to make all of it more or less level, and reducing the height of the wall at the back of the lightwell. The letter reiterated, by reference to what had been said before, why the rights to light were so important to Beaumont, and repeated that its estimated loss from the development would be about £155,000 a year, equating to a capital value of about £3.1 million. The letter continued:
- "Following your discussions with Crispin, I would be grateful if you could now revert back to us with your confirmed intentions in respect of your development and any proposal as applicable."
98. Again, in my judgment, this letter was not a demand for £3.1 million as the price of giving up Beaumont's rights. On the contrary, it was an invitation to put forward an alternative proposal, in line with the proposed cut-back, which would enable Florala to carry out its development.

99. Accordingly, I reject the suggestion that Mr Vaughan sought to hold Florala to ransom at either the 22 August or the 29 August 2017 meeting, because these letters are the best evidence we have of them, they are consistent with the rest of the evidence, and they were not contradicted by Florala. Further, the way Mr Agmon described the matter was that Mr Vaughan said at one or other meeting that: *"This was the figure we would need"* (T2/99). That, however, does not mean that Mr Vaughan offered to give up his rights at this price, and is consistent with his saying that this was the damage which Florala's building would cause.

100. As in the case of the third meeting, neither Beaumont nor Florala sought to recall Mr Vaughan to give evidence about these meetings; nor did either party seek to recall Mr Agmon to deal with this further evidence. However, in my view, that does not matter, because the correspondence speaks for itself and gives a clear indication as to what took place at the meetings; and further, Mr Agmon's evidence in paragraph 153 of his first witness statement was simply a reflection of what he thought *"in retrospect"* about Beaumont's intentions at them.

101. After this there was no material correspondence between the parties, save for Dewar Hogan's letter of 14 September 2017. This said that the drawings and information provided by Florala (i.e. on 28 July 2017) confirmed Beaumont's view that the development would cause a substantial interference with its rights of light, and concluded: *"we reiterate that in continuing with its works, your client does so at its own risk"*.

Florala's construction of the hotel

102. Florala continued its development. In the eastern part of the lightwell it moved its building closer to Beaumont's property (by about 1.5 metres or so), and on the west it raised the fourth floor by 880 millimetres, but one could still see across to the large building on the other side of Moorgate. Internally, alterations were made to the first to the fourth floors to turn them into 27 rooms (the existing shops on the ground floor and their basement service facilities were unaffected).

103. It is now common ground (there was some confusion at trial) that Florala completed its works in the lightwell in early June 2018, at which point it removed the scaffolding which had been up there since early July 2017.

104. After the works had been completed, GIA and Point 2 carried out a further joint analysis, which showed that one of the rooms at Beaumont's property had changed from being "well lit" to "badly lit" as a result of the development (I discuss these terms below), and so in September 2018 part of the parapet of the brick wall was cut back by about three metres in length and half a metre in height.

105. The effect of Florala's development, as altered by this small cut back, was that, as is common ground, Beaumont lost 228 square feet of "well lit" floor area on the ground to fourth floors overlooking the lightwell, or 270 square feet on an EFZ basis.

The Kajima development

106. In April 2018 (i.e. shortly before the Florala works finished), Beaumont's property was afflicted on its southern side as well, by the Kajima development. It is common ground that this created much more noise and vibration than the Florala development, and it was still going on at the time of the trial. I discuss this in more detail below: suffice to say for present purposes that Florala says that it was this development (and other factors), not its own, that has caused such drops in the rents as there may have been since April 2018 (if not before).

The institution and course of proceedings

107. While the building works were going on, Beaumont Business issued proceedings on 9 February 2018, claiming an injunction to restrain Florala from continuing with its works and damages, and seeking an order that it cut them back. As I have said in the summary, the Particulars of Claim did not identify what the proposed cut back should be.
108. As I have also said in the summary, Florala denied liability, but Beaumont Business did not seek an interlocutory injunction, so building continued; and Florala on 18 April 2018 applied for reverse summary judgment seeking the dismissal of the claim for an injunction. The application came on before His Honour Judge Hodge Q.C. on 11 July 2018, who dismissed it on 12 July 2018. He held that the rights of light deed did not make it absolutely clear that this case was about money rather than enforcement of rights to light; and it did not amount to an agreement "*that a right to light claim would be made in order to extract a settlement sum for the benefit of [Beaumont London]*" (see paragraphs 65 and 66 of [2018] EWHC 2112 (Ch)).
109. On 23 September 2019, Beaumont amended its particulars of claim with leave, to ask for an order that Florala's development be cut back in accordance with a diagram shown at annexure 4. So far as I can make out from this diagram, the cut back asked for is the same, or at least very similar, to that which had been proposed by Beaumont to Florala in its letter of 7 September 2017. The cut back was such as to result in all the light taken away being restored to Beaumont's property.

The first issue: the extent of the prescriptive rights acquired by Beaumont

110. On each of the ground to the fourth floors, Beaumont's property has six windows overlooking the lightwell, five facing north, and one facing east (in the column which juts out into the lightwell).
111. It was common ground by the close of the trial that all these windows from the first to the fourth floors had enjoyed access of light for 20 years or more without interruption before the commencement of proceedings, as required by s.3 of the Prescription Act 1832, save one, namely the window furthest east on the second floor, which was one of two windows to the room called "R1/203" by the rights of light surveyors (or 2.07 by Mr Jones).
112. One of the documents produced by Beaumont on disclosure was a planning statement prepared by architects in May 2011 in support of its application for planning permission for the development it carried out in 2011/2012. This included a drawing

which shows a flue in front of window in room 2.07 which looks as if it has been blocked up. This is marked in small black type: "*Glazing replaced with Waterloo Air Products, external louvre*". Mr Vaughan said he could not recall whether there was a vent there.

113. I accept Mr Wonnacott QC's submission that, given the purpose of the drawing, it is likely that the flue, the louvres, and an apparently covered window behind them reflect what was already on the premises at the time, in contrast to the handwritten entries in red on the drawing, which show the proposed refurbishment. Although Florala did not advance a positive case on this point, it was entitled to put Beaumont to proof against its (Beaumont's) own documents. Given Mr Vaughan's inability to gainsay what the document shows, Beaumont has not proved that light came through this window for the requisite twenty years before action.

114. I accordingly hold that all the windows on the first to the fourth floors, save this window on the second floor, had acquired a prescriptive right to light pursuant to s.3 of the Prescription Act 1832.

115. Mr Wonnacott Q.C. also suggested to Mr Vaughan, on the basis of historical drawings drawn up in 1998 and lodged with the City of London Corporation, that the ground floor windows had been bricked up so the ground floor could be used as a lecture theatre. But Mr Vaughan recalled that all the windows save one (for the lavatory) had been covered with a fabric blind on the inside (in which case there was no relevant interference with the light), and I accept this evidence. Therefore, I accept that Beaumont has prescriptive rights to light in respect of all the windows on the ground floor, save that which serves (or served) the lavatory.

The second issue: nuisance

What is the test that must be satisfied to prove a nuisance?

116. Before I turn to analyse the evidence on this issue, I first set out the relevant principles of law.

117. The general principles are helpfully set out in Mr Fetherstonhaugh Q.C.'s and Ms Elizabeth Fitzgerald's opening skeleton, which I gratefully adopt below subject to one or two alterations.

(1) The dominant owner is entitled to:

"... the uninterrupted access through his ancient windows of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitancy or business of the tenement according to the ordinary notions of mankind ...". (See per Lord Davey in *Colls v. Home & Colonial Stores Limited* [1904] A.C. 179 at 204.)

(2) What is "required for ordinary purposes" is a question of fact: *Allen v. Greenwood* [1980] Ch. 119 at 131 per Goff LJ. The availability of artificial light does not affect the amount of light which is required for these purposes: *Midtown v. City of London Real Property Co. Limited* [2005] 1 EGLR 65 per Peter Smith J. at paragraphs 57 to 63.

(3) No actionable interference arises if the amount of light remaining is sufficient for the comfortable enjoyment of his property by the dominant owner according to the

ordinary notions of mankind. The inquiry is not to the amount of light taken but to the amount of light left: Millet J. in *Carr-Saunders v. Dick McNeil Associates Limited* [1986] 1 W.L.R. 922, at 928; and Peter Smith J. in the *Midtown* case (supra) at paragraph 55.

- (4) The “ordinary notions of mankind” are not static: *Ough v. King* [1967] 1 W.L.R. 1547 at p1552-3 (per Lord Denning M.R.); *Deakins v. Hookings* [1994] 1 E.G.L.R. 190 at 192 M (His Honour Judge Roger Cooke).

118. However, on the facts of this case, Mr Wonnacott Q.C. takes three related points, basing himself on the House of Lords’ decision in *Colls v. Home and Colonial Stores Limited* [1904] A.C. 179. First, he says, an interference with light which causes only a small loss of rental or capital value should not be regarded as substantial, even though that loss is more than *de minimis*. A reduction, therefore, which causes a loss of (say) just 1% or 2% to a building’s rental or capital value should not be regarded as a nuisance. Second, he says “*reasonable development opposite is not a nuisance in the City of London even if the light is ‘appreciably diminished’*”. Third, he says, if a room is already badly lit, making it darker still is not an actionable nuisance.

119. In my judgment, *Colls* does not provide support for these arguments, whether taken individually, or in combination.

120. The facts of *Colls* are important. The dominant tenement was an office building which had on the ground floor a long room, 50 foot in depth, with two large windows facing south, but no other windows on the side or at the back. These two windows provided the room with “*an abundance*” of light, as Joyce J. held at first instance, because the building opposite on the other side of the road was just 19 feet 6 inches high, and far below the level of its neighbouring buildings on left and right. Further, the road was 40 feet wide. This created “a gap”, as the Court of Appeal put it (the gap was 36 feet wide), through which the sun could shine and go directly through the plaintiff’s windows all the way to the back part of the room, thereby making up for the lack of any other windows in it. The defendant proposed to put up a new building which would fill in the gap, and thereby deprive the plaintiff of this abundance of light.

121. The plaintiff applied for a *quia timet* injunction, on the ground that it had acquired a prescriptive right to the light it enjoyed, but at first instance, Joyce J. dismissed the action. He held that, despite the reduction in light, the premises “*would still, in my opinion, after the erection of the defendant’s building, be well and sufficiently lighted for all ordinary purposes of occupancy as a place of business*” (as recited in Lord Davey’s speech at [1904] A.C. at page 195). He also held that the reduction in light would affect neither the capital nor the letting value of the plaintiff’s building (see page 180). (The room was occupied by 90 of the plaintiff’s clerks.) The plaintiff appealed, and in the meantime the defendant got on with putting up its new building, but the Court of Appeal (Vaughan Williams L.J., Romer L.J. and Cozens-Hardy L.J.) held that it was not entitled to do so, and ordered it to be pulled down.

122. The court held that on Joyce J’s findings of fact “*real damage would result, though light enough would be left for ordinary purposes of occupancy as a place of business, and there is no finding that the interference is not substantial*” (p313). Therefore, as there was “*real damage*”, the plaintiff had to succeed (p314). It also held

that there was loss of amenity, albeit no loss of rent or capital value, because the plaintiff's electricity costs would increase.

123. The defendant appealed to the House of Lords, who, on convening a second hearing before an expanded panel, unanimously overturned the Court of Appeal. The defendant's argument was that an infringement of light had to be actionable as a nuisance, and therefore had to cause a real injury, that is to say "*to make the house uncomfortable and to prevent the business from being carried on as beneficially as before*" (see pages 180-181).

124. Save for Lord Robertson, who expressed his agreement with Lord Davey, each of their Lordships gave separate speeches. Although they put the point differently, the ratio was that a claim based on loss of light is one in nuisance, and therefore it was not enough for the plaintiff to show only that the defendant's building would substantially reduce the light: the reduction had to be such as to cause a nuisance. But on the judge's findings this had not been established, because, as he had put it, "*the premises were still sufficiently lighted for all ordinary purposes of occupancy as a place of business*". (See Earl of Halsbury L.C. at page 184; Lord Macnaghten at page 187 to 189; Lord Davey page 200, second paragraph; Lord Lindley at page 208 second paragraph to 209 second paragraph.)

125. Apart from their agreement on this bare proposition, their Lordships' speeches do not speak with one voice, save to emphasise that the Prescription Act 1832 had not been intended to alter the previous law as to ancient lights.

126. Thus, the test which was approved by Lords Davey and Robertson (see pages 199, 201) and by clear implication Lord Lindley (see pages 206 to 207, and 209, second paragraph) was that set out by James L.J. in *Kelk v. Pearson* (1866) L.R. 1 Ch. 442.

"I am of opinion that the statute has in no degree whatever altered the pre-existing law as to the nature and extent of this right. The nature and extent of the right before that statute was to have that amount of light through the windows of a house which was sufficient according to the ordinary notions of mankind, for the comfortable use and enjoyment of that house as a dwelling-house, or for the beneficial use and occupation of the house if it were a warehouse, shop, or other place of business. That was the extent of the easement, a right to prevent your neighbour from building on his land so as to obstruct the access of sufficient light and air to such an extent as to render the house substantially less comfortable and convenient".

127. Lord Macnaghten approved the slightly different way in which the test had been put by Best C.J. in his direction to the jury in *Back v. Stacey* (1826) 2 C&P 465 in a side note (see p186-7, and in the headnote page 188 (last paragraph) to 189 (first paragraph)):

"It was not sufficient to constitute an illegal obstruction, that the plaintiff had, in fact, less light than before; nor that his warehouse, the part of his house principally affected, could not be used for all the purposes to which it might otherwise have been applied. In order to give a right of action, and sustain the

issue, there must be a substantial privation of light, sufficient to render the occupation of the house uncomfortable, and to prevent the plaintiff from carrying on his accustomed business (that of a grocer) on the premises as beneficially as he had formerly done.”

128. Likewise, at pages 187 (third paragraph) and 191 (second paragraph) he approved the summary of the principle in the margin note in *Parker v. Stacey* (1832) 5 C. & P. 438:

“That diminution of light and air which the law recognises as the ground of an action against a party who builds near another’s premises is such as really makes them to a sensible degree less fit for the purposes of business or occupation”.

129. I accept that the Earl of Halsbury L.C., perhaps more helpfully to Mr Wonnacott Q.C.’s argument, said at page 185 that “*the value of the test [i.e. in nuisance] is that it makes the amount of right acquired depend upon the surroundings and circumstances of light coming from other sources, as well as the question of the proximity of the premises complained of. What may be called the uncertainty of the test may also be described as its elasticity ...*” He then went on to point out that a dweller in town cannot expect to have as pure air and the like as a dweller in the country. But rather less helpfully to Mr Wonnacott Q.C.’s argument, he pointed out a little earlier in his speech that the question for the jury when they used to have to consider the scope of the lost modern grant was “*what was the extent of the supposed grant*” (see page 183). Clearly, locality is important in considering the extent of a grant, as it may have been in *Colls*; but nothing in the Earl of Halsbury L.C.’s speech suggests that if the grant is of a particular amount, then the grantor can permanently take away a small slice of it by reasonable user of his land, if by doing so he makes the dominant tenement substantially less comfortable and convenient.

130. In the result, therefore, *Colls* does not support Mr Wonnacott Q.C.’s first two submissions, and I accordingly reject them. Where the light enjoyed by the dominant tenement has been no more than is reasonably required for the beneficial enjoyment of the premises, all that the claimant has to show is that the interference has made the premises “*substantially less comfortable and convenient*” than before, as put by James L.J. in *Kelk v. Pearson*.

131. In my judgment, in a case such as this, this means that the business in question must show some real injury, that is to say, something more than the sort of temporary inconvenience which an owner of property should reasonably put up with as part of the give and take of living in a heavily built up commercial environment. But if the interference is permanent, and the business is likely in consequence to suffer a financial loss beyond the trifling, it does not have to show in addition that the owner of the servient tenement acted unreasonably, or that its loss of value is in any particular percentage to the value of the building as a whole (or affected part thereof). Nothing in *Colls* says or implies this.

132. Mr Wonnacott Q.C.’s third point is based upon Lord Robertson’s intervention in the respondent’s argument at page 181:

“Can a man by making one window where there should be five to give proper light, and living twenty years in this cave, prevent his neighbour from building a house which would have done no harm to the light if there had been five windows?”

133. However, this was merely to test counsel’s argument, and the point to which it was directed, as one can see from their Lordships’ speeches, was that surely the owner of the dominant tenement cannot increase the burden on the servient tenement by making an unusual use of his property, by having just one window whose light might be obstructed, when a normal owner would have five, so the obstruction of the one would not matter. This is the point taken up, albeit in different terms, in Lord Davey’s speech at p202-3, and Lord Lindley’s at p209. I accordingly reject the suggestion that in the case of a building that is not well lit or is even badly lit, a further reduction in light can give rise to no cause of action even where there has been nothing unusual in the claimant’s use of the dominant tenement. The question remains, has the reduction in light, from whatever level it may have started, caused a substantial interference with the claimant’s reasonable enjoyment of the property?
134. This is clear from the way the test is put in *Kelk v. Pearson*, which as I have said was approved by three of their Lordships in *Colls*; from the marginal note in *Parker v. Stacey* approved by Lord Macnaghten; and from the way Lord Cranworth put the test in *Clark v. Clark* L.R. 1 Ch. 16: “*Whether the obstruction is such as to deprive the party of such a supply of light as he might reasonably calculate on enjoying*” (a passage approved by Lord Davey: see the last paragraph of page 197, and the third of page 199). Further, the principle of prescription goes back to the notion of a lost modern grant. There is no reason in principle why such a grant should not be inferred where the dominant tenement has enjoyed only a relatively small amount of light for the relevant period. If the effect of the defendant’s building, by reducing the light in such a case, is to make the claimant’s building “*substantially less comfortable and convenient*”, that is every bit as much a nuisance as it would have been had the claimant’s building been better lit.
135. My view is confirmed by three Irish cases to which Mr Fetherstonhaugh Q.C. drew my attention, *O’Connor v. Walsh* (1908) 42 ILTR 20, *Gannon v. Hughes* [1937] IR 284, and *McGrath v. Munster and Leinster Bank Ltd* [1959] IR 313. In the first of these cases, the light received by a tailor’s room in Dublin was restricted and came in through only one window measuring 7 foot by 2 inch, so almost any structure would affect it (see page 21); in the second, the light received by a dentist’s compounding room in Port Laoise, a town in Leinster, came in through a window the light to which was already obstructed by other buildings (see page 287), so the room was already “*very badly lit*” (see page 289); and in the third, the obstruction to the light received by a small room (14 feet 6 inches by 15 feet 6 inches) in a solicitor’s office in Dublin overlooking a light well through two “Georgian type” south facing windows was increased by a building to the west (see pages 316-317). But in each of these cases, the court, applying *Colls*, upheld the complaint, on the basis that the works had made the plaintiff’s occupation substantially less beneficial than before (see pages 21, 290 and 328 respectively).
136. I am likewise confirmed in my view by the one English case on the point to which my attention has been drawn, which is *Deakins v. Hookings* [1994] 1 EGLR 190,

a decision of His Honour Judge Roger Cooke. Light at the back of the plaintiff's home in London came through two windows (see page 191), and the judge held (in relation to the window serving the living room) that "*though the loss of light is limited in scope it is none the less of real significance to somebody who is to live in that room*"; and at 192M-193A, he observed "*in a room that is already ill-lit every bit of light is precious*" (a point with which I agree). He made an award of "negotiating" damages (page 194).

137. I should add that I have considered *Litchfield-Speer v. Queen Anne's Gate Syndicate (no. 2) Limited* [1919] 1 Ch. 407, which was included in the authorities bundle for trial, in which P.O. Lawrence J. held that the proposed interference with poor light coming through two windows to a basement kitchen, which always required artificial light, would not constitute a nuisance (see p408, and p410 second paragraph). The case involved a house in Westminster, London. However, there was no suggestion that the interference would reduce its value, and the case shows only that it is always a question of fact whether an interference is substantial.

Conclusion on the law

138. Accordingly, I conclude that to establish its claim in nuisance, Beaumont needs to prove that, by virtue of the reduction in light, its premises have been made substantially less comfortable and convenient than before; which in practice means it must show that, by virtue of the reduction, it is likely to suffer a loss of rental income over the balance of its 26 year term, in an amount which is more than trifling or *de minimis*. It is therefore irrelevant whether the premises were "well lit", within the definitions used by rights of light surveyors, before the reduction in light caused by Florala's works.

139. Further, I approach the question of relief on the same basis: if Beaumont can establish its loss, it is entitled to all those losses (or an injunction to the full extent needed to restore the light lost) without having to make an allowance on the basis that some of the light could have been taken away in any event. Nor do I make a discount for such *de minimis* amount of loss which Florala might have been able to cause without being liable, because by definition that amount is so small that the law does not care about it.

What was the extent and nature of the reduction in light?

140. On this issue, Mr Webb gave evidence for Beaumont, and Dr Malcolm MacPherson for Florala. Dr MacPherson was a senior director of Point 2, but he had not been involved in the case before. They agreed on two points:
- (1) That Beaumont had suffered a loss of 270.4 square feet of light on the ground to fourth floors overlooking the lightwell, as shown in the EFZ table that had already been agreed in September 2018, and as set out (with some additional figures) in appendix 1 of this judgment; and
 - (2) The cutback of Florala's building which was proposed by Mr Webb equated to 47.59 square metres (or 512.5 square feet), and would have the effect of restoring the light taken away from Beaumont's property, and indeed fractionally improving it in ten rooms (generally by trivial amounts).

141. Otherwise, they were not in agreement. Dr Macpherson's report was short and to the point, but Mr Webb's report spoke at some length about the advantages of natural light, about which Dr Macpherson gave no opinion. In particular, Mr Webb's report relied not only on the EFZ test, but on radiance based analyses (which consist of false colour images and human response tests in black and white), the former of which, he said, *"shows that where reductions are seen, the overall levels of light have dropped and made the room feel more like a lower level from prior to [Floral's] development"*.
142. The visible effect of Floral's development, as shown by photographs taken before and after the development, is that on the eastern part of the lightwell, Beaumont's property, instead of looking across to a brickwork elevation with windows on Floral's property, now looks out on to a white rendered extension projecting two metres or so further into the lightwell than before. Part of this extension (furthest east) is at about the same height as the previous brickwork with a window on each floor, and is more or less at the height of the fourth floor at Beaumont's property; and the rest of it, after a step drop, is about 10 metres lower, with no windows, save a column looking out to the west (i.e. not towards Beaumont's property). Behind this lower part, there is a brickwork building which continues to the western side of the lightwell (now with a flat as opposed to sloping roof). The brickwork building has two columns of windows looking south into the lightwell in slightly different positions from before, one of larger windows, the other of smaller than before.
143. The rooms in Beaumont's property which overlook this development have all been used as serviced office space since 2012, as have all the rooms facing south on the other side of the dividing corridor on each floor. They are all advertised on Beaumont's website as being *"flexible high end luxurious and completely unbranded workplaces"*, and access to the upper floors is by way of an original staircase or by two lifts. Their floor to ceiling heights range from 2.5 to 2.7 metres, and they are divided by movable partitions, so they have not always been let out at the same size, but nothing turns on this. Those whose light has been affected by the Floral works are on the ground to the fourth floors facing the lightwell (I shall call this "the affected part" from now on); the fifth and sixth floors have been unaffected.
144. The areas of the affected part and the extent of the loss of light on each floor are shown in the detailed table at appendix 1, which is drawn from the agreed EFZ analysis carried out in September 2018. It can be summarised as follows.

Floor	Area of all rooms	Previously well lit		Post works well Lit		Area loss	Total EFZ loss
	Sq ft	Sq ft	%	Sq ft	%	Sq ft	
Ground Totals/ Avg %	1,115sf	32.5sf	2.87%	28.1sf	2.5%	4.4 sf	6.6
First Totals/ Avg %	1040sf	104.5sf	10%	73.4sf	7%	31.1sf	46.6
Second Totals/ Avg %	1,124sf	161.9sf	14.4%	139.4sf	12.4%	52.5sf	78.75

Third Totals/ Avg %	1022sf	287.6sf	28%	215.8sf	21%	71.8sf	85.8
Fourth Totals/ Avg %	1112sf	537.2sf	48%	468.8sf	42.1%	68.4sf	52.3
ALL	5413sf	1124.7sf	20.7%	925.5sf	17.1%	228.2sf	270

145. The fifth and sixth floors, by contrast, which had similar overall serviced office spaces as those below, were and remained about 97.5% and 99.5% “well lit” respectively.

146. It was agreed between Mr Jones and Mr Shortall that the area of 5,413 square feet for the five floors in the first column should in fact be 5,739 sq. ft, because the rights of light surveyors had slightly under-measured each of the floors. Therefore, the overall percentages for the previously well lit and post works well lit areas should come down to 19.6% and 16.1% respectively. This affected office space represents about 30% of the total office space at Beaumont’s property (19,675 square feet).

147. The origins of this method of assessing loss of light, and what is meant by the phrase “well lit”, are summarised in paragraphs 4.7 to 4.12 of the Law Commission’s Consultation Paper no. 210 published in December 2013.

“4.8 In the 1920s Percy Waldram produced a more precise method for assessing the sufficiency of light. The “Waldram method” works on the basis of a fixed standard of light received from the sky; a standard of light of 500 foot-candles, representing the average condition of sky brightness, was adopted by the National Physical Laboratory in 1928. In 1923 Percy Waldram and his father suggested in *“The Illuminating Engineer”* that the “grumble point” – meaning the “natural illumination at which average reasonable persons would consistently grumble” for ordinary purpose comparable with clerical work was “0.2% of the light which would fall from an unobstructed hemisphere of uniform sky onto a flat roof”.

4.9 The grumble point of 0.2% is equivalent to one foot-candle or one lumen per square foot. Accordingly, one lumen per square foot became the accepted standard for measuring adequate light within a room

4.10 The Waldram method works by taking this standard of adequate light – 0.2% of the sky – and calculating how much of the relevant building or room receives that amount of light (or more) at table-top height [taken to be 85 cm] before and after the obstruction (or proposed obstruction) takes place. This allows the effect of the obstruction on the dominant building’s light to be mapped out using a sky contour diagram; the contours of the diagram show the amount of adequate light that would be lost due to the obstruction.

4.11 Surveyors often apply what is known as the “50/50” rule when assessing the sufficiency of light received by the dominant building after an obstruction

has occurred. This rule provides that a room or building is not adequately lit if it receives less than 50% of adequate light assessed using the Waldram method.

4.12 However, whilst the courts often find the 50/50 rule to be a useful guideline as to what constitutes an actionable interference with a right to light, it is clear that it is not a rule of law and therefore the courts are not bound to follow it.”

148. As for the phrase “EFZ”, this stands for “Equivalent First Zone”, which is an approach adopted by rights of light surveyors to calculate the total of the “well lit” area (as defined above) in any given space as a proportion of the “first zone”. It assumes that the importance of the light lost is greatest near the window and least at the back of the room, and splits the room into four quarters as you get further away from the window. Thus, in the “first zone” it multiplies the amount of light lost by 1.5, in the “second zone” by 1 (i.e. treats it as 1/1), in the “third zone” by 0.5, and in the “fourth zone” (known as the “makeweight zone”) by 0.25. In essence, therefore, the formula works on the assumption that loss of light in the first quarter is the most important.
149. If one puts all this together, what the table above shows in summary, and the table in appendix 1 in detail, is that none of the floors, and none of the individual rooms, in the affected part of Beaumont’s property on the ground to the fourth floors moved from being “well lit” to “badly lit”, because none moved from over 50% to under 50% “well lit” after the removal of the parapet wall in September 2018. On the contrary, all the floors and all the rooms started off as “badly lit”, save for two rooms on the third and fourth floors (R2/204 and R2/205, or 3.08 and 4.08), which were small and started off as more than 50% well lit and remained that way afterwards, but with a reduction.
150. Mr Webb’s report, adopting the Waldram method, also attached “contour” drawings, which showed for each room on each floor, as the partitions then stood, the scope of the “well lit” area before and after the works. When these were drawn (and as reflected in the EFZ table), the office space was divided on the ground to second floors into two large rooms at either wing (each with two windows), and two small rooms in the middle (each with one); on the third floor into three rooms (the westernmost with three windows, the middle with one, and the eastern with two); and on the fourth floor into three rooms (each with two windows).
151. The contour drawings showed only a tiny loss of “well lit” area on the ground floor, gradually increasing up to the second floor, in each case by the window (i.e. in the “front zone” according to the EFZ tables). Those that were lost on the top two floors were further away from the windows (and on the third floor there had never been a “well lit” area by the east facing window on the west wing). Hence, as one can see from the EFZ tables, some of the lost light on the third floor (to the middle room) was in the “make weight” zone (the rest being in the “first zone”); and the loss of light on the fourth floor was either in the “first” or “makeweight” zone. It is important to note, however, the obvious point made by Mr Webb that the loss of “well lit” area affects not only that part of the room which goes from well lit to not well lit, but all the room. The effect ripples through the room.
152. The Waldram method and the 50/50 rule have been the subject of criticisms (see for instance, *The Law of Rights of Light* by Jonathan Karas Q.C. at paragraphs A16 to

A28, and Gale on Easements, 20th edition, paragraphs 7-30 to 31, in particular at note 139). On the facts of this case, the 50/50 rule is irrelevant because none of the rooms or floors moved from “well lit” to “not well lit”, and further, for the reasons I have already given, this does not matter (i.e. because the tort of nuisance does not require this). However, I do not accept that I should ignore the Waldram tests. They have stood the test of time and have the advantage of giving one some measure of the loss of light. But I accept that in a case such as this where the reduction in light is not great, its results provide only a starting point in the inquiry as to whether there has been an actionable interference.

153. Mr Wonnacott Q.C. criticised the Waldram method on the basis that it is artificial, because in a “badly lit” room, most of the daylight will be reflected light rather than skylight, and tenants will not be that bothered by the difference. However, this was not put to Mr Webb, and even if it is right, this is irrelevant to the question of whether there was an interference with Beaumont’s rights to light, which are rights to natural light, not reflected light. Further, Beaumont would have no right to have sources of light reflected from the outside maintained (e.g. the white rendering of the building into the lightwell); nor would it be obliged to maintain them from the inside. (See Gale, at paragraphs 7-21 to 7-22.)

154. Finally, Mr Wonnacott Q.C. contended, as Dr MacPherson had said in cross-examination albeit not in his report, that the best guide for a layman, and therefore how things would seem to a prospective tenant, was the “*radiance evidence*” (T3/49), by which he meant, as I understand it, the false colour radiance images and human response images attached to Mr Webb’s report. Dr Macpherson said that he struggled to see the difference between the pictures, and in his opinion the images of the rooms after the proposed development in the electronic versions, which was the best way of looking at them, showed that they would seem lighter than before. This again was not put to Mr Webb, nor did Mr Macpherson discuss this with him. All I can say is that, although it is not always easy to tell (save with the “R1” rooms), the “false colour images” or at least the “human response images”, where there is a similarity between the layout of the rooms (i.e. R1/203 with R1/202, R2/203 with R2/202, R3/203 with R2/203, R1/204 with R1/203, and R1/205 with R1/204), do bear out Mr Webb’s proposition that the overall level of light has dropped and made the room feel more like a lower level room before Floral’s development.

155. Accordingly, I accept that, whichever method one adopts, there has been a perceptible reduction in the light; but that does not necessarily mean that it was so substantial as to amount to a nuisance.

156. I should mention one final point, which is that a tradition has built up amongst rights of light surveyors that the value of the loss of a “well lit” area has been taken for the last twenty years to be £5 a square foot, even in the City, but this is compensated for by applying a multiplier to that figure (T3/18-19). But it was not suggested in this case that this method should be applied.

What impact did the reduction in light have on the lettability of Beaumont’s property?

157. This was the most difficult issue in the case, and it is unfortunately necessary to go into some detail on it in order to understand the nature of the problem. Beaumont’s

expert witness was Mr John Jones FRICS, of Colliers International; Florala's was Mr David Shortall FRICS, of Alexander Reece Thomson.

158. It was common ground that the serviced office sector has been growing in the London office market, and it provides a competing model to the traditional office accommodation on a flexible letting basis. The ability to rent a small suite for a short term enables small enterprises to be located in central locations which otherwise they might be unable to afford if they had to take on bigger areas, or longer leases (hence Beaumont's suites averaged about 330 square feet each).

159. It was also common ground (or at least not contested by Florala) that Beaumont lets out its office suites on licences at a fee which is inclusive of rent, furnishings, business rates and other services, and it aims to maintain occupancy levels of around 100%. Its own expenses (i.e. rent paid under the lease with Dereif, rates, insurance, utilities, staff costs and other operating costs) are fixed. Therefore, a reduction in fees *pro tanto* reduces its profit margin. It is apparent from the agreed Tenancy Analysis to which I refer below that the lettings would typically be for about a year, but sometimes they would be for two or three years.

160. Third, as again Mr Jones put it (without contradiction from Mr Shortall):

"...offices are valued on a vertical (top to bottom) basis, where the upper floors are generally better lit than the lower floors, and for pure office space, the differential may typically be £1.50 to £2.50 per sq ft reduction per floor. For serviced offices, the differential is larger, as I explain when I consider the evidence provided by [Beaumont]."

161. Fourth, Beaumont's income from licence fees in the calendar years 2015 to 2018, according to a profit and loss statement drawn up from its management accounts, was:

(1) 2015	£2,946,294
(2) 2016	£3,053,895
(3) 2017	£3,056,944
(4) 2018	£2,947,544

Mr Jones' method for assessing the loss: the first report

162. Mr Jones' method for assessing Beaumont's loss in licence fee income was to try to work out the lost annual rent caused by the reduction in light, and then to capitalise this at a yield over the remaining term of Beaumont's lease in order to quantify the diminution in value suffered.

163. Mr Jones did this by analysing Beaumont's lettings on a price per square foot basis; and for this purpose, he appended to his report a detailed calculation of all its lettings, including void periods between lettings, since 2016 up to June 2019 (including the rents payable thereafter from the lettings already made to the end of 2020). This analysis (the "Original Tenancy Analysis") showed that although some suites had been occupied throughout since 2016 by the same client, most had had several clients, which, he said, was in the nature of a serviced office business. This analysis, Mr Jones said,

gave a clear picture of how the “tone”, as he put it, on a pound per square foot basis had changed over time.

164. To arrive at the loss caused by the reduction in light, he stripped out of this analysis all the lettings of the “unaffected parts”, that is to say, all the parts of Beaumont’s building which were unaffected by Florala’s works, being (a) the rooms in the fifth and sixth floors on the north side facing the Florala lightwell, (b) the rooms on the other (south) side of the building, and (c) the rooms in the western and eastern extremities of the building which did not face the lightwell. He then divided lettings of the affected parts between those made “pre-Works” (which he treated as 1 July 2017), and “post the Works” (i.e. after 1 July 2017).
165. Next, he took all the lettings on a suite by suite basis in the period from July 2016 (i.e. 12 months before the start of the works), which he then annualised for each floor on an average basis, so as to produce a reduction in letting fees, from pre-works tone to post-works tone, of £10 for the ground floor and for the first floor, £30 for the second, £20 for the third, and £35 for the fourth. (Details are given in the table below.)
166. In each case, the pre-works “tone” was worked out on the basis of four or more lettings from July 2016; and the post-works tone on the basis of about the same amount, save that there were no new lettings of any sort for the first floor, and just two for the ground floor.
167. Both the pre-works and post-works lettings included, without discrimination, (a) “renewals” (i.e. renewing a licence to the same client of the same room) and (b) lettings to new clients. Mr Jones noted an important exception, however, to this general trend downward trend post works, namely clients who had been in occupation since before July 2017 (i.e. who had taken on “renewals”), from whom Beaumont was still able to extract the same rent or sometimes an increased rent in line with inflation upon renewal, and who therefore should be regarded as atypical and not representing the true market effect of the reduction in light. Although Mr Jones did not refer to this point in his reports, Mr Fetherstonhaugh Q.C. confirmed in closing submissions that the same applied also to what became known, by the end of the trial, as “replacements”, that is to say lettings to existing clients but of a different or an extra room.
168. Mr Jones went on to multiply the difference in “tones” per square foot by the amount of square footage of office space on each of the five affected floors, and arrived at a total annual income loss, and therefore profit loss, of £122,060 (including the areas the rights to light surveyors had missed out). He then multiplied this annual loss by 11.83 (based on a year’s purchase of 7% over 26 years to reflect Beaumont’s right to extend the lease for its full 30 year term) so as to arrive at a capital loss of £1,445,000.
169. I should add that Mr Jones said that he could “*not see any other reasonable explanation for the observed drop in the letting fees for the [affected part]*” than the reduction in light, because the windows, facing the enclosed light well as they did, were “*insulated from other obvious nuisances in a busy commercial location such as Moorgate, i.e. building works*”. This was a reference to the Kajima development being carried out on the southern side of Beaumont’s property, which had been going on since April 2018. He observed that the suites on this southern side too had undergone a decline, which he put down to these building works, but noting that once they stopped,

the position would revert to what it was before. Mr Jones made no reference to any other factors (for example, factors that might have affected the market generally).

Mr Jones's second report

170. In a supplementary report made on 20 September 2019 (which I shall call the second report), Mr Jones revised his assessment of Beaumont's loss in the light of a revised "Tenancy Analysis", or analysis of its lettings. This took into account further lettings to clients after 1 July 2017, and had been agreed with Florala's expert Mr Shortall. He also corrected his previous figure of 26 years to 28 years for the term for which Beaumont was entitled to occupy the property under its lease.

171. On the basis of the revised "Tenancy Analysis", but still taking the 12 months before 1 July 2017 as the relevant period for assessing the pre-works "tone", Mr Jones now revised his previous analysis as follows.

Revised analysis of reductions			
	New pre-works "tone"/Old "tone" in first analysis	New post-works "tone"/Old "tone" in first analysis	New reduction in fees/Old reduction in first analysis
Floor	Psf	Psf	Psf
Ground	£147.50 (£147.50)	£137.50 (£137.50)	£10 (£10)
First	£147.50 (£147.50)	£137.50 (£137.50)	£10 (£10)
Second	£165 (£162.50)	£140 (£132.50)	£25 (£30)
Third	£180 (£175)	£157.50 (£150)	£22.50 (£20)
Fourth	£180 (£180)	£150 (£145)	£30 (£35)

172. In making these revised assessments, he made it plain (and in clearer terms than in his first report) that his principal guide for assessing the "tone" of pre-works and post-works tenancies was the lettings to "new clients", rather than what I have called renewals and replacements. I return to this below.

173. In the light of this revised assessment, and a revised multiplier of 12.14 (to take into account that Beaumont had 28 years left on its lease) Mr Jones calculated the total annual loss of income (and therefore profit) at £108,644 a year; and therefore, using the same multiplier and discount factor, at a capital loss of £1,320,000.

Mrs Jones' third report

174. On the first day of the trial (5 October 2019), Mr Wonnacott Q.C. in his opening handed up to the court a "scattergraph" which compared the average rent trend since March 2013 for the 14 lettings on the sixth floor facing the Florala lightwell (marked in orange dots), with the average trend for the 79 lettings, as I have counted them, for the same period on the ground to the fourth floors (marked in blue dots). The purpose of this was to show that overall, there was no real difference between the rental trend in the unaffected sixth floor, and the trend in the supposedly affected ground to fourth

floors. Therefore, it was said, the reduction in light in the latter since 1 July 2017 had not affected the rents.

175. In answer to this scattergraph, and to make one or two other corrections to his previous reports, Mr Jones, on the fourth day of the trial (8 October 2019), put in a second supplementary report (which I shall call his third report). Mr Wonnacott Q.C. did not oppose this, save to object to a passage concerning the occupier of the first floor, which Mr Fetherstonhaugh Q.C. did not press to have admitted.
176. This criticised the scattergraph, on the basis that it failed to distinguish between (a) renewals and (b) lettings to new clients following a marketing exercise.
177. In addition, it produced, for the first time, an analysis of the rental movement for the sixth floor, from which he concluded that pre-works lettings in the twelve months before 1 July 2017 (which included four lettings to new clients) established a “tone” of £190.16 a square foot, and that this was also the “tone” of the post-works lettings, although there were no lettings to new clients in this later period. It also revised the pre-works tone for the third floor back to the £175 a square foot given in his first report.
178. More importantly, this report attached a series of individual graphs which stripped out all the lettings except those to new clients on each of the ground to the fourth floors and sixth floors since 2013, in order to establish a truer picture, he said, of what had happened to the rents in the affected parts as a consequence of Florala’s works from July 2017 to June 2018.
179. I discuss these graphs in more detail below. Suffice to say for the moment, they appeared to show a reasonable amount of lettings to new clients on all four affected floors and on the sixth floor in the pre-works period, and eleven in the post-works period (but still none on the ground or first floors, and none on the sixth). Save for the alteration I have mentioned above for the third floor, Mr Jones did not alter his previous “tones” pre-works or post-works from those in the revised analysis of reductions above.
180. This third report also pointed out that the average occupancy rate of the ground to the fourth floors in the affected part since July 2016 was about 93%: it was not suggested that there had been any material difference in occupancy rate pre and post-works.
181. Accordingly, in the light of his revised figures, Mr Jones re-calculated Beaumont’s income (and profit) loss as £102,735 a year, which, multiplied by 12.14, resulted in a capital sum of £1,245,000.

Mr Shortall’s evidence

182. Mr Shortall’s first report, dated 8 July 2019, which was to similar effect as his evidence in cross-examination which I discuss below, and which as can be seen I accept in many but not all respects. In summary, his evidence was that:
- (1) First, there were two other factors since 2016 which could have caused Beaumont’s rents to drop, if they had indeed dropped, i.e. (a) three substantial developments nearby in Moorgate, including in particular the Kajima development immediately

to the south of Beaumont's property, which started in April 2018; and (b) an increase in supply and competition in the serviced sector market in the City since the 23 June 2016 referendum result.

- (2) Second, both the scattergraph, and individual analyses of the rents on the affected floors, showed that there was no material difference in trends between rooms in the affected part and those in the unaffected part (i.e. the fifth and sixth floors overlooking the lightwell, and the rooms on the eastern and western wings, and the south, of Beaumont's property).

Conclusions on the valuation evidence

Mr Jones

183. Subject to one important point, I reject Mr Jones's valuation and conclusions. I say this for the following reasons, starting with the important point in Mr Jones's evidence which I do accept.

The importance of lettings to new clients

184. The one point, and indeed the big point, in Mr Jones's evidence which I do accept is his point, which I have mentioned above, that it is only lettings to new clients which provide a reliable guide to the market. He put it very clearly, both in his second and third reports, and in cross-examination, which I set out here, because of the importance of what he said.
185. Thus, in paragraph 7.3.4 of his second report, in justifying the pre-works "tone" for the third floor, he said of one of the lettings in January 2017 that it "*was effectively a renewal to an existing client, and thus must be disregarded as indicative of a market rentI have therefore attached less weight to this letting for these reasons, i.e. effectively this client took the space in an adjoining suite at a similar level of actual rent ...*". [Emphasis in underlining added.] In other words, a letting to a so-called "replacement" letting was not indicative of market value.

186. To similar effect, in his third report, he added:

"Existing clients are generally price insensitive and are prepared to accept inflationary increases in rent rather than incur the cost and disruption of moving, hence renewal rates are not representative of what a new client would be prepared to pay for an office suite."

187. Likewise, in cross-examination, he made the same point, when he was being taxed by Mr Wonnacott Q.C. with the proposition that surely the scaffolding, once works began after 1 July 2017, would have affected the rents that tenants would be prepared to pay. When I asked him to clarify why it would not have done so, he replied (T4/83-84):

"Existing clients are prepared to put up with some discomfort during works and because of the quality service that is provided by Beaumont and either are prepared then – because they do not want the disruption of moving, to find alternative premises, the distraction of moving, and as a consequence - are prepared –

and there are numerous examples throughout my analysis that they are prepared to pay either the same rent or, as is customary with Beaumont, just an inflationary element to reflect the uplifting costs of running the operation. So there is – I mean, this is at the heart of the issue.”

He repeated this at T4/85.

188. In my judgment, this evidence makes good sense, and I accept it. Further, it does appear to be borne out by the statistics in paragraphs 6.1, 7.1 and 8.1 of Mr Jones’s second report, which generally show existing tenants paying higher sums on renewals (of up to £35 or so) than new clients.

189. Further, although Mr Shortall said that this inertia factor applied less to short term tenants in serviced offices than those in offices under longer leases, he accepted from Mr Fetherstonhaugh Q.C. that an existing tenant in a serviced office would have to go to the inconvenience of finding alternative premises, moving its computers, taking pictures off the walls, moving its staff and letting its customers know where it had gone; and that that this would have “*some impact*” on his decision whether to stay or move. But I prefer Mr Jones’s evidence, to the extent that there is any real difference, both for the reasons he gave, and also because Mr Shortall accepted that if renewals stayed the same or showed only a slight increase, but lettings to new clients went down by, say, £150 to £130 a square foot, that would be “*informative*”, and that it could tell one something, albeit one would need to view it in the context of other lettings (T5/80).

Reasons why I do not accept Mr Jones’s calculations of loss

Insufficient statistical data in the lettings to new clients

190. However, there are a number of problems with Mr Jones’s application of his approach, and with his evidence in general.

191. First, his valuation was based on the premise that the amount of lettings over the years provided a sufficient statistical basis on their own, without having to look elsewhere for more general market evidence, from which to draw his conclusions that the reduction in light had led to a reduction in the rents. He said it was a “*valuer’s dream*”.

192. However, it turned out by the end of the trial that there were just five lettings to new clients after 1 July 2017 of the affected rooms facing the Florala lightwell, not the eleven which he had mentioned in his third report, because it was common ground that three of those which he had given for the second floor, and three for the third floor, were in fact renewals or replacements. This meant that the lettings of affected rooms to new clients after 1 July 2017 came down to just those shown in the following table.

Floor	Pre 1 July 2017 tone according to Mr Jones; and lettings to new clients	First new client after 1 July 2017	Second new client after 1 July 2017	Percentage drop (on average)
Ground	£137.50 6 lettings to new clients, last in December 2016	None	None	N/A

First	£137.50 5 lettings to new clients, last in April 2015	None	None	N/A
Second	£165 7 lettings to new clients, last in June 2016	Knight Harwood £135 psf July 2018 Room 2.09 and 2.10		18%
Third	£175 8 lettings to new clients, last in May 2016.	TFC Legal £159 psf April 2108 Room 3.10	K. Hindley £153 psf March 2019 Room 3.09	9% (Based on £156 average)
Fourth	£180 2 lettings to new clients, last in October 2015	M B Fitzgerald £146 psf December 2017 Room 4.10	Andersen Tax Services £149 psf July 2018 Room 4.09	18% (Based on £147.50 average)

193. This on any footing is a relatively small statistical sample, although not in my judgment so small as to be meaningless. Further, as can be seen from the table, they do show quite a drop from Mr Jones's pre-works "tones" (as finally revised in his third report) for the second, third and fourth floors, albeit the lettings on which those "tones" were based were lettings to new clients before mid 2016, i.e. over twelve months earlier.

194. However, the greater problem is that Mr Jones's analysis did not include any comparable lettings to new clients in unaffected parts of the building after 1 July 2017, to see whether the downward trend shown by these five new lettings was caused by the reduction in light to the second to fourth floors, or by other factors. The only comparator on which he relied were the seven post-works lettings on the (unaffected) sixth floor, which were at more or less the same levels as before. But as said above, all these lettings were mere renewals or replacements (six of them to the same client), and therefore are not good indicators of what a new client would pay.

195. Indeed, Mr Fetherstonhaugh Q.C. conceded in his closing submissions that the sixth floor was "*not a brilliant comparator*". He argued, however, that Mr Shortall broadly agreed in cross-examination that the sixth floor showed that "the market" had not softened and had sustained only a shallow decline, but this is not what Mr Shortall said: he merely agreed that the scattergraph showing the renewals for the sixth floor showed a "*shallow decline*". That was self-evident, but it does not say anything about the market generally as it might be reflected by lettings to new clients. He also sought to argue that lettings of renewals and replacements had to be given some weight. But this is inconsistent with Mr Jones's evidence discussed above, which correctly discounts such lettings, because they are likely to stay the same even if the market has gone down in the meantime.

196. Mr Fetherstonhaugh Q.C. went on to submit that the problem was that because of the Kajima development, which, it was agreed, began in April 2018, one could not draw any inferences from the new lettings to the unaffected parts of Beaumont's building, that is to say, the western and eastern wings at Coleman Street and Moorgate, and the rooms on the south side of Beaumont's building immediately next to the Kajima development. Therefore, for example, one could not draw any inferences from the fact that in August 2018, Andersen Tax Services, a new client, had taken room 3.01 at a rent of just £145.61, down from the rent payable by its predecessor of £170.99 agreed in January 2017. That reduction, he said, must have been caused by the Kajima development.
197. Therefore, submitted Mr Fetherstonhaugh Q.C., there being no other realistic reason to account for the post-works drop in rentals to new clients, the inference had to be that it was caused by the loss of light. In this context, he criticised Mr Shortall's approach, on the basis that it merely put forward potential hypotheses as to what might have caused a decline in rental values, without, however, spelling out in detail why in fact those hypotheses were correct. Further, none of them, he said, was particularly compelling.
198. I accept the argument to this extent, namely, that the Kajima development would have affected the rents on the south side, and the eastern and western wings of Beaumont's property, and that therefore new lettings from April 2018 (the agreed date on which the works began) are unlikely to provide satisfactory comparables, because they too will have been "afflicted", if I may use this metaphor, with their own problem. However, and subject to this, in my judgment there are three problems with the wider argument.
199. First, it does not explain why there were no appropriate comparables from the rest of the building between 1 July 2017 and April 2018, i.e. the period between the commencement of the Florala works and the commencement of the Kajima development.
200. Second, if there were no were proper comparables from the rest of the building for the period from July 2017 (or indeed from April 2018), then that was all the more reason for Mr Jones to carry out at least some analysis of the market to see whether and to what extent the reductions in rentals in the affected area could fairly be referable to the reduction in light, rather than market movements in this period, but he made no attempt to do this.
201. Third, it does appear that there was material which Beaumont could have adduced from rentals to new clients in unaffected parts of the building from July 2017 in support of its case on causation, but which, for whatever reason, it chose not to adduce, as I explain in the following paragraphs.
202. When I reviewed the papers after the trial, I looked at the agreed Tenancy Analysis, which showed that there were lettings to new clients of the unaffected parts of the building in mid 2017 which pre-dated the Kajima development, and which appeared to show that even then the rents chargeable to new clients in the unaffected areas had gone down from those being charged about a year earlier, generally by a

factor of about 10%. I was concerned by this, because it seemed to contradict Mr Fetherstonhaugh Q.C.'s point that one could not look to the unaffected parts for comparables (in particular the lettings of the rooms on the eastern and western wings of Beaumont's property) because of the Kajima development. Accordingly, I wrote to the parties on 10 February 2020 asking for submissions on the point, identifying four such lettings, although in fact two of them, as I was corrected by the parties, were replacements, not lettings to new clients.

203. In response, Mr Wonnacott Q.C. provided a table of 12 lettings to new clients of the unaffected parts since 1 January 2017, three of which he conceded were unreliable (because the rent payable by the new client or the previous tenant was "blended" with rents on other rooms), and three of which were lettings to new clients in January 2017, (a) to Arc Pensions, at an increase of about 8% from the previous letting, (b) to Pivigo, at an increase of 11%, and (c) to Child & Child, at a decrease of about 5% or so.

204. More significantly, there were six lettings in mid 2017, as follows:

Room	New client	Date of new client's tenancy	Rent	Date previous client's tenancy	Rent in previous tenancy	Drop
G.03	GPIM	25/05/17	£122.43	1/01/17	£142.60	(£20.17)
3.02	Wessex Partners	16/06/17	£112.59	16/01/17	£146.58	(£33.99)
5.01	Total Assist Recruitment	04/07/17	£127.74	25/05/16	£184.21	(£56.47)
4.01& 4.11	Thistle Initiatives	11/07/17	£161.71	14/02/17	£178.95	(£17.24)
4.02	GL&M UK	11/07/17	£127.85	01/06/16	£156.08	(£28.23)
2.04	Payally Ltd	27/07/17	£130.20	02/05/14	£160.47	(£30.27)

205. Mr Wonnacott Q.C. contended that what this showed was that there had been a decline in the rentals by 2017 (more accurately, mid 2017), and therefore the market for new lettings was dropping by then, even if rentals for renewals were holding up. This did not tell you, however, whether such bigger reductions if any in the affected rooms after 1 July 2017 were caused by the Florala works, or by other factors (such as the Kajima development, the developments generally in the neighbourhood, or change in the market).

206. Mr Fetherstonhaugh Q.C. in his note in reply (Mr Wonnacott Q.C. served his note without waiting to exchange) objected that Mr Shortall had never suggested that one should look at lettings from the unaffected parts, and that the parties had been in agreement about this because they were affected by different factors, in particular the Kajima development. However, all that Mr Shortall accepted was that the Kajima development was likely to affect Beaumont's property more than the Florala works.

207. That said, I do accept Mr Fetherstonhaugh Q.C.'s point that Mr Shortall did not suggest that one should look at lettings from the unaffected parts, nor indeed did Mr Wonnacott Q.C. cross-examine Mr Jones or Beaumont's witnesses of fact on them to establish the point that the market had already suffered a 10% to 15% decline by July 2017 (which is what the above table of lettings to new clients appears to show) in the last six to twelve months.
208. Mr Fetherstonhaugh Q.C. went on to submit that had Florala run this point, then Beaumont would have adduced evidence from Mr Adam to explain that in fact internal works began on the Kajima development in August 2017, and that Beaumont had known about the works since a meeting with Kajima in May 2017. As a result, Mr Adam told its director of sales to complete deals as quickly as possible at below-target rates to ensure that office suites were occupied before the development began. Therefore, the new lettings of rooms in the affected parts from May 2017 could not be used as a benchmark to establish underlying trends for the building. Beaumont offered to adduce a witness statement from Mr Adam to that effect now.
209. In response, Mr Wonnacott Q.C. contended that this only confirmed that the Kajima development was the real reason for the drop on both the north and the south sides of Beaumont's building, because it was silly to pretend that when potential new clients were being taken round, the effect on prospective tenants somehow stopped in the middle of the corridor between them.
210. In the light of these exchanges, I was not prepared to allow Beaumont to put in another witness statement, because it was far too late. If it had wanted to run a case that (a) the rents on lettings to new clients on the unaffected parts held firm up to mid 2017, and (b) special circumstances then caused it to reduce its rents there from mid 2017 onwards, then that was a case which it could and should have run in any event in order to bolster its case that it was the reduction in light, rather than a decline in the market, which caused the drop in rents in the affected parts after (rather than before) mid 2017. On the other hand, I do accept that because Florala itself did not suggest that it could be inferred from the material on the unaffected parts that the market had already dropped by about 10% to 15% in the twelve months before 1 July 2017, it is not open to me to find from this alone that the market had in fact dropped by this amount by then.
211. The upshot of all this is that the valuation evidence on causation is unsatisfactory. The only statistical evidence on lettings to new clients in the twelve months before 1 July 2017 were (a) the four new lettings I have mentioned above on the sixth floor, which were at rents of £199 and (in two cases) £190 a square foot in December 2016, and of £184 a square foot in April 2017, and (b) the three lettings of other unaffected parts in January 2017 mentioned above.
212. These suggest that the market did remain more or less stable until January 2017, but say nothing about the period thereafter, save that the last rent on the sixth floor (of £184) was about 8% below the average of the previous three there. Therefore it is difficult to tell whether the market had held firm between January and 1 July 2017, or had declined, or had indeed dropped to the level of the five post-works lettings to new clients relied on by Beaumont. And after 1 July 2017, because of the Kajima development and the absence of lettings to new clients on the sixth floor, there are no

reliable comparators for the five lettings to new clients in the affected parts, to see whether the rental declines (as against the 2016 levels) of 18%, 8% and 9% for the second to fourth floors can fairly be attributed to the reduction in light. And those five lettings anyway form only a very small sample.

213. The furthest, therefore, that the statistical evidence takes the matter is that the reduction in light *may* have caused the apparent reduction in rental values in the affected parts from 1 July 2017. But whether or not it did so has to be decided by reference to other evidence as I discuss below.

Flawed model

214. Second, Mr Jones's model for working out the loss of income in the affected parts was flawed, and he did not carry out a "sense-check" to see whether the conclusions he drew from the statistical evidence in fact made sense.

215. This was shown by two things.

216. First, his pre-works and post-works tones (£147.50 and £137.50) for the ground and first floors were the same, even though there was twice as much light on the first floor, which, he accepted, would traditionally be a better location and "*a more attractive proposition for a prospective tenant*" than the ground floor, because rents rise as one goes up a building: he would expect a differential of 3% to 4% in ordinary office buildings, and he would "*look to that*" in serviced office buildings (T4/93-94). This showed, not that light was necessarily irrelevant, but that the statistical evidence he had was not a sufficiently sensitive instrument to show this.

217. Second, he concluded that both the ground and the first floors had suffered a loss of £10 a square foot from the reduction in light (resulting in losses respectively of £11,000 a year and £10,040 a year), even though the loss of "well lit" area on the ground floor was just 4.4 square feet (or 6.6 on the EFZ measure), and the loss of "well lit" area on the first floor was just 31.1 square feet (or 46 on the EFZ measure).

218. In cross-examination, Mr Jones explained that (as said above) there were only renewals on these two floors, and so he arrived at his conclusions on them by taking as his starting point the rental loss of 15% which he had calculated from the lettings to new clients on the second floor as against the previous tone for that floor. He then worked back from this to conclude that the first floor would not be as badly affected as the second, because it had less light, hence a lower percentage loss of 10% could be inferred for it; and, by a similar logic, a percentage loss of 7.5% could be inferred for the ground floor: thereby arriving in each case at the figure of £10 a square foot loss.

219. However, having reflected overnight on the point, he conceded that (having previously been 60/40 on the point) he was just 50/50 on whether the reduction in light to the ground floor had resulted in a loss of rental, so he accepted that it had caused no loss there, a position Mr Fetherstonhaugh Q.C. confirmed in his closing. (T5/41) As to the second floor, he came down from a reduction in rental of £10 to £5 a square foot. Again, the same point arises: Mr Jones assumed that the statistics proved more than they did.

220. There is one further aspect of Mr Jones's model which came under attack in Mr Wonnacott Q.C.'s cross-examination, namely, it did not sufficiently allow that the post-works rents would have been affected for a time by the scaffolding and building works in the Florala lightwell. The scaffolding was about three feet away from Beaumont's building (T5/10), and Mr Jones accepted that while it was up, it would have had a depreciatory effect on lettings in addition to the problem of loss of light, which he put variously at 2%, or (for a short term letting of a year) 5% (T4/90) or £5 to £10 a square foot as one went up the building (T5/29-31). His evidence fluctuated somewhat, because he was cross-examined on the mistaken basis that the scaffolding was up until September 2018 rather than just early June 2018 and that therefore certain lettings in that excess period must have been affected by it when in fact they were not. This caused him to revise his post-works "tones" upwards a little, and to reduce his estimated loss for the whole building to £850,000.

221. However, although two of the five post-works lettings to new clients had lease dates which started in the scaffolding period (M.B. Fitzgerald on the fourth floor in December 2017, and TFC Legal on the third floor in April 2018), I am not prepared to find that the scaffolding made any material difference to the rent agreed, save for, say, £5 a square foot for the M.B.Fitzgerald rent (so as to make the post works average for the fourth floor £150 rather than £147.50). This is because, according to the agreed Tenancy Analysis, both lettings were for two years, and anyway, the TFC Legal letting actually took effect from 24 June 2018 (i.e. after the scaffolding had come down); and Mr Jones was not specifically cross-examined on either of these two lettings.

Equivalence

222. In paragraph 9.15 of his first report, as I have said, Mr Webb said that the radiance-based analysis (i.e. the "human response images" and "false colour images" attached to it) showed that *"where reductions are seen, the overall levels of light have dropped and made the room feel more like a lower level room prior to the Defendant's development"*. Before writing his first report, Mr Jones had spoken to Mr Webb on his first inspection of the premises, who, he said, had told him rather more categorically that the light on the fourth floor had deteriorated to that previously received on the third floor, and likewise down to the first floor, where the light received was now equivalent to the light received on the ground floor before the works. In cross-examination, Mr Jones explained that he had asked Mr Webb what, in simple terms, his take on the situation was, and this part of his report reflects what he explained (T4/95). This assessment, therefore, was evidently not based on the results of the EFZ analysis (which showed that there was still a larger "well lit" area on each of the higher floors post-works than there had been on the lower floors pre-works).

223. However, this led to a difficulty for Mr Jones's analysis, because it resulted in the conclusion that the post-works rents for each higher floor had been reduced by the loss of light to a level that was even lower than the pre-works rents used to be for the floor below, even though the higher floor still had (or felt as if it had) as much light as the lower floor had had below. So, for example, even though the light on the third floor had reduced only to the pre-works level of light on the second floor, the average rent for the third floor post-works (of £156 a square foot or thereabouts) was now far lower than the pre-works average of £165 for the second floor.

224. This was odd, because Mr Jones's position, as expressed in his third report, was that: "*The higher the floor, the higher the rent than the floors below*". There was no reason why this should not have applied to Beaumont's property, because it had two lifts servicing all the floors, and indeed Mr Adam, in his first witness statement, said in terms that the main reason for this was that "*tenants (and people generally) prefer rooms which provide good natural light, and from which they can see the sky*". If light was the only factor in play, one might have expected the post-works rents on the third floor, for example, to drop to the level of the pre-works rents on the second. But if they dropped any further, then on the face of it the difference was caused not by the reduction in light but by something else.

225. Mr Jones's answer was that this is where his analysis took him, and that it was very dangerous to move away from "*the evidence*", by which he evidently meant the rental statistics (T4/97). However, he accepted the logic of Mr Wonnacott Q.C.'s proposition, and he was unable to explain why the post-works rents on the higher floor should have gone down below the pre-works rent on the lower floor if light was the all important factor (T4/102-4). His only explanation was that this was the consequence of the model he adopted. (T4/104) Later, he accepted (T4/106):

"Q. So the rental value of the third floor – all other things being equal – should now be what the second floor used to be, yes?

A. Yes.... I cannot refute the logic of the question [but] I cannot ignore the evidence."

226. Mr Jones went on to deny that the drops in rent could have been caused by any factors other than the reduction in light, such as changes in the market conditions, and to say that "*This building provides all the evidence that is necessary, because there are 300 lettings of a valuer's dream*" (T4/103)

227. However, I reject this evidence. First, Mr Jones's reliance on the statistical evidence was misplaced, because, as I have said above, the relevant post-works evidence is limited and is equivocal on the question of causation. Second, it is unlikely, in particular given Mr Jones's concession about the "*logic*" of the position, that the post-works rental drops were caused by the reduction in light, to the extent that they went below the pre-works rents charged for the lower floor. Third, and relatedly, I reject his evidence that there were no other factors that would have caused the drop to this extent. In my judgment, at least to this extent, the loss was caused by other factors, most probably the Kajima development and a change in market conditions in the City of London after the 23 June 2016 referendum, which I discuss further below in the context of Mr Shortall's evidence.

228. I should say that Mr Fetherstonhaugh Q.C. pointed out that on the evidence (i.e. the EFZ tables), the hotel works did not in fact have the effect of reducing the light all the way down to the pre-works level of the floor below. However, this more or less reflected the gist of paragraph 9.15 of Mr Webb's report on a non-technical level, and Mr Webb cross-refers in his report to Mr Jones's report without comment on how Mr Jones recorded his comments (they are both dated 12 July 2019). Further, as Mr Wonnacott Q.C. countered, if the light on the higher floor post-works was still higher than it was on the lower floor pre-works this made it all the harder to attribute all the rental drops to the reduction in light.

Conclusions on Mr Jones' valuation

229. I therefore reject Mr Jones's evidence that Beaumont's property suffered a loss of rent in the order of £102,735 a year as a result of the reduction in light. Taking into account Mr Jones's concessions on the ground and first floors, and the "equivalence" point, and on the assumption that Mr Jones's pre-works "tones" are broadly reliable (subject to the point I mention in the next paragraph), I consider that the loss caused by the reduction in light is unlikely to be more than the following at most.

Floor	Rental pre-works psf	Rental psf below which any further drop was caused by factors other than light loss	Maximum possible loss psf caused by light loss	% loss
Ground	N/A	N/A	£0	0
First	£147.50	£142.50	£5	3.5%
Second	£165 (2 nd floor pre-works)	£147.50 (1 st floor pre-works)	£17.50	11%
Third	£175 (3 rd floor pre-works)	£165 (2 nd floor pre-works)	£10	5.75%
Fourth	£180 (4 th floor pre-works)	£175 (3 rd floor pre-works)	£5	2.75%

230. This, I emphasise, is merely a maximum for Beaumont's loss, before taking into account other adjustments, which I set out below.

Mr Shortall

231. I can state my conclusions on Mr Shortall's evidence more briefly, because it was simpler than Mr Jones's.

The Kajima development

232. First, it was common ground that the Kajima demolition works were more substantial than the Florala works, and I accept that they would have had, as Mr Shortall put it, a graded effect throughout Beaumont's building, albeit it would not damage the rooms on the affected side as much as those next to the Kajima development. This is because the building was quite narrow, and the noise and vibrations from them would travel through it (T5/43). Further, first impressions matter, and I accept Mr Shortall's point that the hoarding and scaffolding right next to the building's otherwise smart Coleman Street entrance might also have an impact on a prospective tenant's decision whether to take a room there. It would detract from one of its selling points.

233. I therefore accept that this is likely to have been a factor, albeit of uncertain extent (there being no evidence on this), in the apparent decline in the rentals in the affected area after 1 April 2018 (i.e. the date on which the Kajima works began): whether or not it was before, I am not in a position to say because there was no cross-examination and no admissible evidence on the point.

234. As to the other nearby building works, Mr Shortall accepted that their only real effect would be on the general attractiveness of the area on the Moorgate wing, rather than on the affected rooms. In cross-examination, he accepted that the 41-42 London Wall development would not affect *"the central property"* at all – i.e. the rooms overlooking the Florala lightwell or the Kajima lightwell (T5/45); and he was unable to quantify what if any impact the 51-53 Moorgate development would have had on rental values. I therefore do not accept that either of these other developments would have had any material effect on prospective tenants' decisions.

Changes in the market

235. On this, I accept Mr Shortall's evidence, on which he expanded in cross-examination, that as a result of the vote in the 23 June 2016 referendum demand in the serviced office market increased, because the uncertainty has caused businesses to want more flexible accommodation. Therefore more suppliers have come into the market, with the result that Beaumont is now having to compete with *"new offerings"*, as he put it, in the City of London (T5/49). Thus, for example, WeWork, which was originally more *"funky"* (in contrast to Beaumont's more traditional style), has started to attract traditional office occupiers, such as accountants and solicitors (T5/51). Mr Shortall said: *"They are competing in the serviced office market. They may be offering slightly different variations on the same theme, but they are offering serviced offices"*. As Mr Vaughan himself noted in his second witness statement, the wide range of serviced office accommodation in London makes it easy for customers to move their offices or change service providers.

236. Accordingly, I accept that this new competition is likely to have had some impact on the rentals which Beaumont has been able to charge for the affected rooms, in this case since January 2017. But no attempt was made by Mr Shortall to quantify that impact, and I do not accept that it was so great as to eliminate all other considerations, whether taken on its own, or together with the Kajima development.

Changes in light

237. On this, I was less persuaded by Mr Shortall's approach. His view, as expressed in cross-examination, was that the natural light was not *"of poor or very poor level"* (T5/65). In this connection, he explained that the lighting to a room *"creates a feeling of ambience, space and if it is generally at an acceptable level, if it changes within that range of acceptability in my view it would not affect the rental value of that room"* (T5/66). But in this case, he said, the change was not great enough to have this effect. He explained that the loss of light *"was at a relatively low level and such that it does not change the quality of light to a level that is as perceptible that would have an impact on value. It does not take a very well-lit room to a very poorly lit room"* (T5/73).

238. I use the word “approach” in the previous paragraph, because it was more argument, albeit understandable, than evidence. But the problem with it is that it overlooks that each and every small change gradually leads to a big change, and it assumes that it is only at certain specified points (for example between “poor” and “very poor”) that a small change becomes significant. But there was no market evidence that the changes in Beaumont’s light fell within a particular band within which no loss of rent or capital value occurs. I therefore reject this notion, which anyway strikes me as implausible: on the face of it, each reduction (subject to the *de minimis* rule) leading to the ultimate extinction of light is as significant as the other. Further, I reject the suggestion that there will be no substantial interference unless a very well-lit room is turned into a very poorly lit room. That is a matter to be decided on the evidence in the individual case, not as a matter of high-level generality.

Conclusions on the valuation evidence

239. Accordingly, my conclusions on the valuation evidence are as follows:

- (1) The interference with the light on the ground floor caused no loss in lettability.
- (2) The evidence of the five lettings to new clients on the second, third and fourth floors of the affected area, albeit a small sample, is sufficient to show that there has, on the balance of probabilities, been a drop in the post-works rental market for the affected area since 1 July 2017.
- (3) To the extent that the rentals on these lettings are lower than the pre-works rentals on the floor below, they are unlikely to have been caused by the reduction in light, and are likely to have been caused by the Kajima development and new competition since the beginning of 2017.
- (4) To the extent that the rentals have gone down on each of the first to the fourth floors to the previous level of the floor below, then this reduction may have been caused in whole or in part by the reduction in light.

Other relevant evidence on the cause of the reduction in rentals

240. I therefore turn to consider the other evidence in the case.

Mr Adam’s evidence

241. The most important evidence is that of Mr Adam, one of whose principal roles was meeting prospective tenants, negotiating lettings with them, and negotiating renewals with them. As a result, he said and I accept, he had a good understanding of what features are important to them and affect rents. In his first witness statement, dated 29 March 2019, he said that he was sure that the reduction in light to some of Beaumont’s rooms would make them less attractive to tenants and adversely affect the rents. As Mr Vaughan pointed out, the size of windows and the amount of natural light passing through them are important elements in providing the feeling of high end luxury Beaumont wants to create.

242. More importantly, Mr Adam added in paragraph 11 of his second witness statement dated 27 August 2019 the following.

“I am aware that Mr John Jones of Colliers International is giving evidence in this regard, so I will only say that my own experience of conducting negotiations for the letting of the affected rooms bears out that the reduced light in those rooms has made them less attractive to prospective, and actual tenants, has made them more difficult to let, and has pushed down the rents we have been able to obtain.”

243. It is fair to say that this evidence is in somewhat general terms, but it was unchallenged, and I see nothing implausible in it. It may be, as I have held, that Mr Jones substantially overestimated the loss of income that is likely to result from the reduction in light; but it does not follow that I should treat this evidence from Mr Adam as wrong or unreliable. On the contrary, it is important, primary, evidence from the man on the ground as to his own experience in carrying out negotiations. Further, I accept that Mr Adam was an honest witness, and I have no reason to disbelieve this evidence.

244. Mr Wonnacott Q.C. explained that the reasons he did not challenge this evidence were that (a) Mr Adam said in the passage I have recited that he was going to rely on Mr Jones to demonstrate his proposition, and (b) anyway it was not clear until Mr Jones’s third report (which was served only after Mr Adam had given evidence) that Beaumont was relying or principally relying on lettings to new clients. However, in my judgment, these were not sufficient reasons for not challenging this evidence.

245. As to the first point, Mr Adam’s evidence in the passage above was not saying that he was leaving everything to Mr Jones: on the contrary, as I have said, he was giving evidence of fact of what he himself had found in his own experience in trying to let out the affected rooms. Of course, if cross-examination of Mr Jones positively established that there had been no decline in the rentals at all, or at least, such decline could not have been caused by the reduction in light, then Mr Adam’s evidence might have been swept away as irrelevant. But otherwise, if accepted, it was potentially important because it would support the conclusion that at least some of the reduction was caused by the reduction in light.

246. As to the second point, in my judgment it was clear, at least by the time of Mr Jones’s second report served on 20 September 2019, that he was principally relying on the lettings to new clients, rather than mere renewals, for his conclusion (see the passages recited in paragraphs 186 to 188 above). Further, even if this had not been clear, it seems to me that Mr Adam’s evidence had to be tested against such statistical evidence as Mr Wonnacott QC wanted to rely upon to discredit it. This would not involve asking about the market generally, or market trends, which would be matters for Mr Jones, but testing Mr Adam’s evidence that it was the reduction in light that was making it harder to let out the rooms. Was this, for example, mere supposition or inference, or was it based on potential clients expressing more negative views about light in the affected rooms than before? And did he have an explanation for two of the lettings Mr Wonnacott Q.C. relied upon in closing submissions for saying that the light did not matter, namely (a) Transact’s willingness to pay almost as much (just £1 less a square foot) in February 2016 for room 103 as they had previously been paying for room 433, and (b) the Godliman Partnership’s willingness to pay just £17 less a square foot for rooms 307 and 308 than for 201?

247. Accordingly, I accept Mr Adam's evidence on this point (he knew what he was talking about on it), and accept that the reduction in light in the affected areas did cause, at least to some extent, the reduction in the rents after 1 July 2017, and that it will continue to do so in future.

The rights of light evidence

248. Second, as I have said above, I accept the evidence of Mr Webb mentioned above, which was not challenged, that the radiance images showed that the effect of the Florala development was that the overall levels of light had dropped and made the rooms feel more like a lower level room before the development. This, taken together with Mr Adam's uncontradicted and unchallenged evidence that the higher the floor the higher the rent because of the increase in light (and Mr Jones's evidence that the differential in ordinary offices would be 3% to 4%), shows that a permanent reduction in light which makes a higher floor feel more like a lower level floor is likely to cause a material loss of amenity and therefore rent.

249. In this context, I accept Mr Webb's evidence, which again was unchallenged and uncontradicted, that in a room having a window which provides natural daylight to the room, even a small quantum of natural daylight is valued significantly by occupiers and users of that space, as borne out by the literature summarised in the National Renewable Energy Laboratory's Technical Report "A literature review of the effect of natural light on building occupants", in particular section 4:

"Humans are affected both psychologically and physiologically by the different spectrums provided by the various types of light. These effects are the less quantifiable and easily overlooked benefits of daylighting. Daylighting has been associated with improved mood, enhanced morale, lower fatigue, and reduced eyestrain. One of the important psychological aspects from daylighting is meeting a need for contact with the outside living environment (Robbins 1986)."

Conclusion on whether and to what extent there was a nuisance

250. I therefore conclude from Mr Adam's and Mr Webb's evidence that the reduction in light did play some part in the reduction in the rents in the affected rooms after 1 July 2017 (save for on the ground floor), and that for this reason alone, however difficult it may be to quantify that reduction, Beaumont has established that the reduction caused a substantial interference with its rights such as to amount to a nuisance.
251. I should say that in coming to this conclusion, I reject Mr Wonnacott Q.C.'s point that there was no substantial interference, because all Beaumont had to do to restore the amount of light in most of the affected rooms was (a) to put in new, thinner windows with less of a frame, which would therefore allow more light to enter the room (only about 80% of light actually got through the current windows); or at least (b) to put in new windows without, as the current windows have, transom bars half way down. The latter point was that the transom bars measured 6 or 7% of the surface area of the window (T3/35), and all but five of the rooms had suffered a reduction of only 7% or

less light on the Waldram method. So windows without transom bars would remove the problem.

252. However, this is not answer to whether or not Florala's works caused a nuisance in the first place. First, as I understand it (although the point was not the subject of argument) the right to light is the right to the light coming through the aperture, rather than the window placed in the aperture, as long as the window is not boarded up (compare Gale on Easements para 7-04). Second, even if that is wrong, the point, it seems to me, is covered by *Dent v. Auction Mar Company* [1866] LR 2 Eq 238, where, at page 251, Vice-Chancellor Page Wood held as follows on a similar argument:

"Then, secondly, it was argued by the defendants in Dent's case that the plaintiffs might have made their windows larger. I apprehend it is not for the defendants to tell the plaintiffs how they are to construct their house, and to say "You can avoid this injury by doing something for which you would have no protection". If the plaintiffs constructed their new window, it could be immediately obstructed as being a new window. They have a right already acquired by their old existing window; that right they wish to have preserved intact; and I think they are clearly entitled to retain the right as they acquired it, without being compelled to make any alteration in their house".

253. So far as the point goes to damages, it may be (I say no more) that in certain cases a defendant could argue that a claimant's failure to take remedial steps to improve its light was a failure to mitigate, which would go to reduce an entitlement to compensatory damages. But here, Florala did not plead, as it had to, that Beaumont could reasonably have mitigated its losses; and anyway I accept Mr Webb's evidence that if you removed the transom bar, you might get more reflected light in but it would not necessarily mean you get more of a view of the sky from the working plane; and that reflected light is of different quality and less intense, and would be reflected only while the wall of Florala's hotel in the lightwell remained white (T3/36).

254. Accordingly, I conclude that the reduction in light caused by Florala's works caused a nuisance; and further, given my rulings on the law set out above, I conclude that it did so to the extent that it can be shown that the reduction caused a loss in rental value on each of the four floors.

Third issue: compensatory damages

255. In the tables above, I have set out the "maximum possible loss" for each floor based on Mr Jones's pre-works figures after taking into account the equivalence point. However, this loss presupposes that the light on the higher floor post-works has been reduced to the level of the pre-works light on the lower floor, when in fact it will still be (and feel) higher, as shown by the EFZ tables. But Mr Webb's evidence that the reduction will make the floor above feel "more like" the floor below suggests that it has gone down by over half way the pre-works level of the floor below.

256. Accordingly, doing the best I can I conclude, on a preliminary basis, that, on the third floor, £6 per square foot (three fifths of the £10 maximum possible loss for the third floor) was caused by the reduction in light; and on the fourth floor £3 per square foot (three fifths of the £5 maximum possible loss for the fourth floor).

257. As to the other two floors, the position is almost impossible to assess.
258. In the case of the first floor, the only evidence of diminution in value post-works was Mr Jones's off the cuff estimate in cross-examination of £5 per square foot. Given that the first floor was not as badly affected as the second and third floors, I take its diminution to be £3 per square foot.
259. As for the second floor, there are two points.
260. First, the figure of £147.50 for the pre-works tone arrived at by Mr Jones for the first floor was unlikely to be representative of the future, because this was also his figure for the ground floor, and in the long run, on the evidence of both Mr Adam and Mr Jones which I have discussed above, one would expect a graduated increase between the floors. Therefore, in my judgment £154 per square foot (more or less half way up to £165 for the third floor) is a more realistic base figure than £147.50 for assessing the maximum possible loss caused by the reduction in light after 1 July 2017; and in consequence, the maximum possible loss was £11, not £17.50.
261. Second, as I have explained above, Beaumont has failed to prove its case in relation to the easternmost window on the second floor. I accordingly reduce the damages for the second floor from three fifths of the maximum possible loss (i.e. £7.20) to £6. (This was one of two windows serving the room, so little turns on its exclusion from the calculation of loss.)
262. Accordingly, my preliminary conclusion on the annual loss of income from the reduction in light can be summarised as follows.

Floor	Pre-works rental	Figure below which any reduction caused by other factors	Maximum possible loss attributable to loss of light before adjustment	Likely loss attributable to loss of light after adjustment	Total annual loss on floor (rounded up/down to nearest 10)
First	£147.50	N/A	N/A	£3	£3,339 (£3 x 1,113 sf)
Second	£165	£154 (Adjusted)	£11	£6	£6,744 (£6 x 1,124 sf)
Third	£175	£165	£10	£6	£6,510 (£6 x 1,085 sf)
Fourth	£180	£175	£5	£3	£3,336 (£3 x 1112 sf)
TOTAL					£19,929

263. As a cross-check, I have considered what the position would be if, rather more simply, one treated the total pre-works differential between the first to fourth floors as

roughly £32 (i.e. between £147.50 and £180), and assumed that the pre-works increase per floor, and therefore the maximum possible post-works loss per floor, was equalised at £8 a floor. On this basis, it would be reasonable to attribute the losses on the second and third floors as about £5.50 a square foot (as the more affected of the floors), and those on the first and fourth as about £3.50 a square foot. This would result in more or less the same total figure.

264. However, as Mr Wonnacott QC rightly reminded me, I must look at the bigger picture, to test these preliminary conclusions to see if they are realistic, or even, as he would say, faintly realistic.

265. The bigger picture, in my judgment, is this:

- (1) The total pre-works rental from the first to fourth floors was, on Mr Jones's figures, about £745,426 (say £750,000) odd, made up of (a) £164,32974 for the first floor (£147.50 x 1,114.1 sq ft); (b) £185,493 for the second floor (£165 x 1,124.2 sq ft); (c) £195,480 for the third floor (£180 x 1,086 sq ft); and (d) £200,124 for the fourth floor (£180 x 1,111,8 sq ft).
- (2) This was achieved with a total square footage of 4,435 square feet. (I have taken this figure from the figures in the table at appendix 8 to Mr Jones' first report.)
- (3) Of that 4,435 square feet, 1,257 square feet were originally "well lit" (on a non EFZ basis); in other words, about 28% of the first to fourth floors was well lit before the works.
- (4) The effect of the reduction was to reduce the "well lit" area of the first to fourth floors (on a non EFZ basis) by 227.9 sft, to 1,029 sft. In other words, a reduction in the "well lit" areas of about 18%, so as to bring down the total "well lit" area (on a non EFZ basis) of the first four floors from 28% to about 23%. (The EFZ figures for the pre- and post-works position are not, so far as I am aware, available, but I have no reason to suppose they would show a very different reduction.)
- (5) Mr Adam's evidence was not challenged. That evidence of itself suggests a noticeable, rather than negligible, difference in rental values caused by the reduction in light.
- (6) Accordingly, it is credible, and I conclude, that the rentals for the first to fourth floors dropped by about the 2.5% suggested by the laborious analysis above (i.e. around £20,000 out of £750,000).

266. It was common ground in closing that the multiplier to apply to any figure for loss was 12. It was also common ground, in response to a question that I asked the parties by note of 10 January 2020, that I did not have to take into account the potential benefit that might result to Beaumont on the five yearly rent reviews under its lease, or if and when it exercised the option to renew its lease. Accordingly, I calculate Beaumont's total compensatory damages as $12 \times £20,000 = \text{£}240,000$.

Fourth issue: is Beaumont entitled in principle to an injunction or negotiating damages?

267. Mr Wonnacott Q.C. accepts that if Beaumont establishes liability, it is in principle entitled to an injunction alternatively, under s.50 of the Senior Courts Act 1981, to damages in lieu.

268. However, he contends on the facts that because Beaumont's purpose throughout has simply been to extract a ransom payment from Florala, without any genuine concern about the interference with its light, it has disentitled itself to an injunction, and so the jurisdiction to award damages in lieu does not arise.

269. I reject this argument. I have already rejected that this was what was motivating Beaumont at particular points in the story (i.e. at the meeting on 14 October 2014, in the negotiations for the sale to Dereif in later 2014 and early 2015, and in the principal to principal meetings in August 2017), but I also reject it more generally. Beaumont is a high end luxury serviced office provider, and the market, as I have found on the basis of Mr Shortall's evidence, is becoming more competitive. Further, I accept Mr Vaughan's evidence that Beaumont achieved the highest rents in the City and the West End, along with one or two close competitors. Every little shift in advantage or disadvantage, therefore, mattered, and I can well understand why Beaumont was so concerned not to be prejudiced by the reduction in light, especially as it had spent £6.2 million in 2012 in refurbishing the premises and adding the sixth floor.

270. Further, although I have found that Beaumont very substantially overestimated its likely losses, by almost eight times the amount I have found, when it told Florala in August 2017 that it would stand to lose £155,000 a year or £3.1 million capitalised as a result of the loss of light (including in the basement, which never even featured in the claim), neither Mr Vaughan nor Mr Adam sought to hide in cross-examination that this was indeed their calculation. Thus, at T2/43, Mr Vaughan explained that he and Mr Adam had calculated that Beaumont's loss would be over £150,000, and perhaps £200,000 a year, which capitalised (he said) would come to £2.5 million. He continued (in evidence which I also accept):

"It is obvious to me that to seek compensation at the level of £2 million would just be unpalatable. They would not understand it and we would never achieve that. That is why we never entered into pecuniary negotiations. The negotiation is all about them cutting back their scheme not so it did not impact at all on us. We would have been neighbourly and have allowed some de minimis transgression but that never happened. We thought we were in control of our rights of light, then they build that building. It was only about money in the sense of protecting a capitalised income stream of £2 million plus, i.e. protecting profit, our commercial interest."

271. Likewise, Mr Adam too said in cross-examination that Beaumont had calculated its losses at £2.5 million.

272. I reject, therefore, Mr Wonnacott Q.C.'s contention that the £3.1 million was "*a dishonestly inflated claim*", and that everything unravelled when the August 2017 meetings were cross-examined into evidence. The short answer is that the figure was not advanced in support of a claim for money. Further, I reject the suggestion that by putting in figures for the basement in the 29 August 2017 calculation, Mr Vaughan or Mr Adam were acting dishonestly, because they knew that the windows there had been covered with veneer panels. If such an allegation was to be made against them, it was for Florala to make it and to ask to have Mr Vaughan and Mr Adam recalled to explain why the basement was included in the calculation, and what they knew about the basement.

273. Finally, I do not find that the size of the loss which Beaumont said it would suffer made any difference to what happened. Even if it had estimated a more realistic figure than £3.1 million, there is no basis for saying that Florala, as at this stage (i.e. by when it started the works) would have made a satisfactory offer, or that even if it had, Beaumont would have accepted it.

274. I also reject, on this point, the argument (which Mr Wonnacott Q.C. barely pressed at trial) that the inevitable, or indeed natural, inference from the rights of light deed agreed with Dereif is that Beaumont (whether Beaumont London or Beaumont Business) was concerned only with extracting a ransom payment, for the reasons given by His Honour Judge Hodge Q.C., with which I entirely agree.

275. The deed provided, as I have said, that if Florala increased the height of its building by 11.25 metres within the next 15 years, then Beaumont London, the vendor, would retain the right to light claim for any infringement. But as H.H.Judge Hodge Q.C. held at paragraph 67 of his judgment [2018] EWHC 2112, it does not follow that the deed amounts to an agreement “*to extract a settlement sum for the benefit of [Beaumont London]*”. As is apparent from the background set out above, Beaumont was still concerned in early 2015 at the possibility, however remote, that it might be required to tear down the sixth floor of its property. I therefore accept Mr Vaughan’s evidence that Beaumont wanted to control any mutual right to light deal with Florala, because otherwise Dereif might negotiate a net figure with Florala to “*clear the deck*” and earn some money for itself. Thus it could leave Beaumont “*high and dry*” (T2/35), with Florala able to interfere with Beaumont’s rights to light, but with neither Beaumont London nor Beaumont Business able to do anything about it. And I accept that Beaumont was prepared to give away to Dereif rights in relation to a development of more than three floors (hence any rights in relation to a development of over 11.25 metres) because this would never be allowed by the City of London’s planning department (T2/49).

276. Finally, I also reject another point on which Mr Wonnacott Q.C. sought to rely, namely that Beaumont did not join SACO into the proceedings when it must have become apparent to it on disclosure on 26 February 2019 that Florala had granted it a fifteen year lease of the hotel. The argument went that if Beaumont was serious about an injunction, it would at that point have sought to join SACO to the proceedings. As I explain below, I accept that, for an injunction, Beaumont should have put SACO on notice of the claim and joined it if necessary, but I do not accept that its failure to do so was deliberate. The first time the point was made was in Mr Wonnacott Q.C.’s skeleton argument for the trial, by when it would have been too late to join SACO to take part in the trial itself, and in my judgment, the reason why Beaumont did not notify or join SACO earlier was simply oversight on its part. The alternative, which is that Beaumont gave positive instructions to Messrs Dewar Hogan not to notify or to join SACO once the lease was disclosed, is wholly implausible, in particular given Mr Vaughan’s and Mr Adam’s evidence about the importance of light to Beaumont’s property.

Fifth issue: negotiating damages

277. Although legally this question arises only if I refuse an injunction, it is convenient to deal with it before turning to whether an injunction should be granted. It

was common ground that I have power to award negotiating damages to give a fair equivalent for what would be lost by the refusal of an injunction (i.e. the sum which Florala and Beaumont, acting reasonably, would have agreed to be paid to Beaumont in return for it giving up its rights to light). (See now the judgment of Lord Reed (with which Lady Hale, Lord Wilson and Lord Carnwath agreed in *Morris-Garner v. One Step (Support) Limited* [2019] AC 649 at paragraph 95.)

278. Two issues arise, on which both parties adduced yet more expert evidence:
- (1) Could Florala have developed an equivalent hotel as profitably even if it had had to build within the narrower frame required by a cutback which would restore the light which Beaumont lost as a result of its development?
 - (2) If and to the extent that Florala could not have developed an equivalent hotel within a narrower frame, how much profit did it make from not doing so, and how much of that, in a reasonable hypothetical negotiation, would it have been prepared to give up?

Could Florala have built an alternative hotel?

The architects' evidence

The Florala Alternative

279. In his second witness statement, dated 22 July 2019, Mr Agmon exhibited a file note by Florala's architects, Messrs Lifshutz Davidson Sandilands ("LDS"), with accompanying drawings of the second, third and fourth floors of Florala's property. These showed, he said, that even with the cutback claimed by Beaumont, the hotel could still have been designed in such a way as to contain 27 rooms without any material loss of workability ("the Florala Alternative").

280. In particular:
- (1) Only part of the 1.82 metre increase in height to 34 London Wall had to be cut back, and the resulting reduced headroom to the third and floors could be reallocated internally across the four floors, because the first and second floor had generous heights.
 - (2) The re-designed scheme would still have a dual entry lift (i.e. a lift with two doors), but using the original lift shaft at 73, rather than the new lift shaft constructed for the hotel (to the rear of 71 Moorgate);
 - (3) Only the extension on the 73 Moorgate wing would require stair access;
 - (4) In place of the hotel's main staircase on the third and fourth floors in the rear extension, there would be a new staircase in 34 London Wall;
 - (5) The hotel as redesigned would still provide "level access" on each floor (i.e. each floor of the building would be more or less flat, without the need for connecting stairs taking you to a different level on the same floor).

281. In response, Mr Dexter Moren of Dexter Moren Associates Limited provided an expert report dated 12 September 2019.

282. This noted that the hotel as built endeavoured to provide level access to the different parts of the scheme by a dual entry lift, and only the extension into 73

Moorgate required stair access; and that floor levels in 34 London Wall (the wing of the building) were generally lower than those in 67 to 71 and 73 Moorgate.

283. However, the problem with the Floral Alternative was that the floor height to apartment 17 on the fourth floor (which would be the most affected apartment) would be reduced at its rear to about 1.9 metres, and to approximately 2.7 metres at its front; whereas the “*minimum optimum floor to floor height in hotel/serviced apartment developments*” was 2.85 metres (being 2.6 metres in the bedrooms plus a 250 mm floor slab, and 2.2 to 2.4 metres in bathrooms and corridors to allow for service ducts (T68)). This would mean having to reduce the floor levels at 34 London Wall even further than they had been in the scheme as built; and this would have increased the difference between the floor levels of 34 London Wall and the same floors at 73 and 67 to 71 Moorgate and required more stairs in the connecting staircases.

284. Having given a floor by floor breakdown, Mr Moren concluded that:

- (1) The new staircase in 34 London Wall would rise through and reduce the sizes of apartment 12 at 3rd floor level and 17 at 4th floor.
- (2) The scheme would also result in a loss of three rooms in 73 Moorgate (one on each of the first, second and third floors), and in 13 rooms not having level lift access (unlike the hotel as developed); or alternatively in a loss of no rooms in 73 Moorgate, but in 19 rooms having no level lift access. The first alternative could be ameliorated, but only slightly, by using a ramp on the first floor (where the hotel reception was), so as to result in a loss of just two rooms in 73 Moorgate and nine rooms there (rather than 13) having no level lift access.
- (3) Further, on the ground floor the lift in the redesigned building (i.e. at 73 Moorgate) would not be accessible to wheelchair users because of the step up in level at the entrance on London Wall (which could not be solved by the use of a ramp). (A further criticism, that retaining the lift there would make linkage to the service entrance and back of house at 71 Moorgate impossible, was true of the hotel as built, so I consider it no further.)

285. By a second report of 19 September 2019, Mr Moren added that:

- (1) If there was a dual entrance lift (i.e. as in the Floral Alternative), one could fit in 27 rooms, but five of them would have such reduced areas that they could be used only as hotel rooms (ranging from 13 to 21 square metres), and not as serviced apartments of the sort one would expect to find in an aparthotel such as Floral was seeking to operate. (Such apartments need to be at least 20 to 21 square metres.)
- (2) Even if one redesigned the scheme so as to have only a single entrance lift, only eight of all the apartments in the hotel would have level lift access (being those in 34 London Wall), unless a ramp was introduced which (as I understand it from his previous report) would increase this number, but still only to twelve.

286. By an expert report in response dated 27 September 2019, Mr Waite of LDS did not particularly dispute Mr Moren’s criticisms, but instead appeared to put forward a further proposed scheme. This was not, in my judgment, what was envisaged by Deputy Judge Clare Ambrose’s order of 10 September 2019 (which allowed Floral to do no more than put in expert evidence in reply on this issue), but on the second day of the trial I allowed the report to go into evidence, because Mr Fetherstonhaugh Q.C. had very fairly indicated that he would be in a position to deal with it anyway.

287. According to Mr Waite's report:
- (1) One could get round Mr Moren's criticisms of the Florala Alternative in his first report (i.e. loss of 3 rooms in 73 Moorgate and 13 rooms without level lift access, or 19 rooms having no lift access) by reconfiguring the floor levels for the first to the fourth floors, and access to reception on the first floor could be obtained by a platform lift at street level by the entrance to 71 Moorgate.
 - (2) Under the reconfigured Florala Alternative, one could build all 27 apartments with areas in excess of 22 square metres.

288. In answer to this, Mr Moren put in a further report, which he supplemented by examination in chief on the third day of the trial. His evidence was to the following effect:

- (1) Mr Waite's revised Florala Alternative allowed for a roof depth at the top of the hotel at 34 London Wall of just 250 millimetres, which was "*completely impossible*", given that you have to provide insulation and waterproofing. An absolute minimum would be 300 mm, although probably that should be 500 mm. [64]
- (2) A good ceiling height for a hotel room is 2850 millimetres.
- (3) Taking into account both these factors, the floor level of the fourth floor would be 26.23 metres; of the third floor 23.38 metres; and of the second floor 20.85 metres.
- (4) But this would create a serious problem, because on the third floor, London Wall would be 23.38 metres as compared to a height of 25.18 metres for 67, 71 and 73 Moorgate. This would mean you would need a staircase of 11 risers (not just of 9 as in Mr Waite's revised configuration), which in turn would block the entrance to the lift and the exit and get in the way of people coming out of it. That would be not only dangerous, but "*physically impossible*", said Mr Moren. As he put it, you would have to be a "*limbo dancer*" to get round them. Also, he doubted that this would be permissible, given that this was a main fire stair to the building. This was "*fundamental*".
- (5) A further problem on the third floor was that the new configuration would require what was evidently a major structural support for no. 71 and 73 Moorgate to be opened to allow for a door to be put in (by contrast to the original Florala alternative, which put the door elsewhere). Mr Moren did not believe that this could be done.
- (6) The fourth floor would have the same problem with height differences (26.23 metres for London Wall, as against 28.47 for 67 to 71 Moorgate, and 27.92 for 73 Moorgate). So a connecting staircase which for the new configuration allowed 9 risers would in fact need 14, making it "*pretty difficult*" (albeit not impossible or a health and safety problem) to get into the lift lobby.

289. In cross-examination, Mr Moren accepted that, if instructed, he would have tried to design a 27 apartment hotel within the envelope in question, but, he said, "*I am not sure it is achievable*".

290. Mr Wonnacott Q.C. sought to attack Mr Moren's criticisms of Mr Waite's first report, but with little success.

- (1) Mr Moren accepted that to get a floor to ceiling height of 2.85 metres (i.e. what his first report said was needed) one could lower the floors in 34 London Wall, but this would increase the number of steps needed to connect to the rest of the building on each floor. e(T3/74)

- (2) He accepted that Mr Waite's revised Florala Alternative increased the spaces of apartments 12 and 17 to more than 20 square metres on the third and fourth floors respectively, although the dimensions would make apartment 17 uncomfortable at the low point of the sloping mansard where the double bed would go, which was not suitable for an apart hotel. (T3/80) Further, this could be cured only by lowering the level of the fourth floor (by 1 metre he said, not just by six inches as suggested by Mr Wonnacott QC), and this would exacerbate the problem on the third floor about the connecting stairs getting in the way of the lift (T3/82).
- (3) On the question of level lift access, this was normally expected in an apart-hotel, and it would only be *"very occasionally that you would have a room that is not level access to lift, because people tend to have luggage and moving up a staircase is actually quite difficult"*. And although the hotel as built did not have it, nonetheless it was very close to having it, with just six rooms not having it. (T3/86)

291. As for Mr Waite, he rather undermined Mr Wonnacott QC's attempts to rescue his first report by accepting in cross-examination that he agreed with Mr Moren's criticisms of it.

292. He also accepted that his revised configuration was drawn up simply to meet Mr Moren's criticisms of the Florala Alternative, to show that a room height of 2.85 metres could be achieved in 34 London Wall, but it was just *"an academic response to facts raised by Mr Moren about the 2.85 clear floor to floor heights that would be seen as standard"*. He also accepted that:

- (1) The roof depth at the top would have to be 300 to 500 mm, not just 250 mm.
- (2) As a result *"There would still be an issue with levels that we would have to deal with in a design"*, and that Mr Moren was not wrong in saying more stairs would be needed (i.e. which would get in the way of the lift entrances) if one took the floor levels he had worked out.
- (3) He accepted that if one had to build rooms with a lower height of 2.85 metres (i.e. 2.6 metres for the bedrooms allowing for the ceiling) this would *"I guess you may have to charge a lower – I do not know. If it was a hotel, a lower rate than a larger room with a larger floor to ceiling height...."*
- (4) He accepted that the door on the third floor in the revised Florala Alternative could be going through a wall or a chimney breast, and that he had not carried out any form of engineering investigation to see whether it was feasible.

293. I accordingly have no hesitation in accepting Mr Moren's evidence that, although the original Florala Alternative was capable of being built within the envelope required by the cut back, nonetheless this could only be by one of the following methods:

- (1) Using a dual entrance lift scheme as in his first report, which would mean the loss of three rooms in 73 Moorgate (one on each of the first, second and third floors), and that 13 rooms would not have level lift access (unlike the hotel as constructed);
- (2) Using a dual entrance lift scheme as in his second report, which presupposed that five of the rooms would no longer be suitable for hotel use (measuring from 13 to 21 square metres, including apartments 16 and 17 on the fourth floor); Alternatively

- (3) Using a single entrance lift scheme, which would mean that although no rooms would be lost in 73 Moorgate, 19 rooms would not have level lift access (again, unlike the hotel as constructed).

294. It is true that Mr Moren accepted, in cross-examination, that if instructed he would have tried to build 27 apartments in the building as cut back, but the most he was able to say was that: *"I would have a go. I have tried it and I am not sure that it is achievable. I would have a go, yes, like any architect"*. However, as no particular design was put to him, despite the indulgence given to Florala to advance the further alternative put forward by Mr Waite in his 27 September 2019 report, I conclude on the balance of probabilities that in fact no such design was in fact achievable, at least none which made economic sense.

The hotel valuers' evidence

Mr Douglass's evidence

295. Beaumont's expert on this issue was Mr Harry Douglass MSC MRICS, of HVS (amongst other things a specialist hotel valuation firm). In his first report, dated 12 July 2019, which was prepared before the Florala Alternative was put forward, he gave evidence about the difference between what a purchaser would pay for the hotel as constructed (£15.9 million plus acquisition costs on an income capitalisation approach, or about £16.4 million plus such costs on a direct capitalisation approach), and the value of another scheme which he had been asked by Beaumont to consider. This resulted in a difference in market value between the two schemes of £2.2 million on an income capitalisation approach, or £2.1 million on the direct capitalisation method. However, I do not need to consider this report or these valuations, because it was followed by a second report which considered the Florala Alternative and resulted in a lower profit for Florala to share under any "negotiating damages" award.

296. In this second report, dated 27 September 2019, Mr Douglass carried out a comparison of the value of the hotel as constructed as against the Florala Alternative, but with the disadvantages pointed out by Mr Moren's 12 September 2019 and 27 September reports in having to adopt either (a) the single lift entrance scheme or (b) the dual lift entrance scheme.

Comparison with the Florala Alternative with the single lift entry scheme

297. The single entry lift scheme, like the hotel as constructed, would still have 27 apartments, but with a reduced average area of 32 (from 33) square metres, and with 13 rather than just four rooms without level lift access. Under this scheme, the net rent receivable from SACO would still be for 27 rooms (and therefore £742,500 and increasing over the years), but Mr Douglass estimated (a) a reduced average rent of £164 a room in 2019/20 to £171 a room in 2021/2 and thereafter (but with the same occupancy rates for the scheme as constructed), and (b) "departmental expenses" to reflect the additional labour costs of servicing the rooms without lift access.

298. After making adjustments to take into account the higher risk resulting from a reduction in the rent coverage ratio from 1.2 to 1.4 to just 1 to 1.2 at its highest (i.e.

because SACO under the Florala Alternative would no longer receive so much rent, but its costs would increase), he estimated that the single entry lift scheme would have a gross market value (on the income capitalisation approach, with an average discount factor of 7.6%) of £15.1 million, or a net market value after acquisition costs of £14.1 million. Alternatively, he estimated it would have a net market value of £14.6 million on the direct capitalisation approach. As for the sales comparison approach (i.e. looking at sales of similar hotels in London over the last few years), this yielded a range of £10.7 million to £19.3 million.

Comparison with the Florala dual entry lift

299. As for the dual entry lift scheme, Mr Douglass assumed (as posited in Mr Dexter's second report) that it would still have 27 rooms, but with five of them measuring between just 13 to 21 square metres. Further, the average room size would be reduced from 30 square metres (as suggested by Mr Moren's plans), and six of them would be without lift access (as opposed to just four in the hotel as built).

300. On this basis, the net rent receivable from SACO would still be for 27 rooms (and therefore £742,500 and increasing over the years), but he estimated (a) a reduced average rent of £165 in 2019/20 to £172 a room in 2021/2 and thereafter (but with same occupancy rates for the scheme as constructed), and (b) "departmental expenses" to reflect the additional labour costs of servicing the rooms without lift access (but not as much as in the single entrance scheme).

301. After making adjustments to take into account the higher risk resulting from the lower rent coverage ratio of just 1 to 1.2 at its highest (i.e. because SACO would no longer receive so much rent, but its costs would increase), he estimated a gross market value for the dual entry lift scheme (on the income capitalisation approach, with an average discount factor of 7.5%) of £15.8 million, or a net market value after acquisition costs of £14.8 million; and a net market value of £15.4 million on the direct capitalisation approach. As for the sales comparison approach, this again yielded a range of £10.7 million to £19.3 million.

302. Finally Mr Douglass produced a further calculation for each of the single entrance and dual entry lift schemes, to reflect how a typical operator would project the hotel's future operating results, from which a typical tenant such as SACO would calculate a market rental value. This produced similar figures, but it was not suggested that anything turns on this.

Mr Douglass's conclusions in his second report

303. In summary, therefore:

- (1) The difference in value between the hotel as built, and the single lift entry scheme, was £1.8 million (both on the income capitalisation and direct capitalisation bases); and
- (2) The difference in value between the hotel as built, and the dual entry lift scheme, was £1.1 million (on the income capitalisation basis) and £1 million on the direct capitalisation basis.

Mr Kirkpatrick's evidence

304. Mr William Kirkpatrick of Gerald Eve was Florala's expert. He estimated that the hotel's gross development value, using a profits method of valuation and using comparables as a cross-check, was £18.5 million, based on the rent payable by SACO of £742,500 p.a. (which he considered to be an appropriate rent, given that SACO would be able to make a net operating income of almost £1.1 million). He assumed that purchasers would be prepared to buy at a yield of 3.75% (which came to £19.8 million), which, after allowing for purchase costs, would result in a sale price of about £18.5 million.
305. Second, he calculated that the hotel's residual value as built was £4,280,000, based on the costs incurred by Florala, but adjusted to reflect market costings (Florala had managed to reduce its costs by about £1 million to £7.75 million because of its relations with suppliers). These included a deduction of a 17.5% profit margin to reflect what a developer or purchaser would factor into an appraisal of the property at the valuation date, a point to which I return below.
306. He also carried out two further residual valuations, one on the basis that the hotel was reduced by 10 square metres, the other on the basis that it lost one unit. The former produced a slightly reduced gross development value of £18,300,000, and residual value of £4,250,000; the latter, a gross development value of £17,900,000 and residual value of £4,180,000 respectively. These were premised on the argument that Beaumont was entitled only to a more limited cut back than the one it was claiming.

The cross-examination

Mr Douglass's cross-examination

307. There was very little challenge to Mr Douglass's reports in cross-examination, except to get him to confirm that his first report assumed that all of the cut back would have to be carried out (which would result in the loss of apartments 16 and 17 on the fourth floor), and that he had not actually been given plans of the Florala Alternative. However, it was not suggested by Mr Wonnacott QC that anything turned on this latter point.
308. He also confirmed that what he called the "market value" of the hotel as constructed was what Mr Kirkpatrick referred to as the "gross development value"; that his figure was £16.4 million and Mr Kirkpatrick's £18.5 million; and that it was possible that sensible valuers could disagree about it and "*it might be something in between*". He also agreed, at least generally, with the figures given by Mr Kirkpatrick in his two further hypotheses, saying that if 10 square metres to the hotel were lost, this would be unlikely to cause any significant difference to the gross development value; and that if one good big room was lost and replaced with horrible one, then the loss to the gross development value would be something less than £600,000.
309. Importantly, Mr Douglass was not cross-examined on any other part of his reports.

Mr Kirkpatrick's cross-examination

310. Mr Kirkpatrick accepted in cross-examination that the major difference between him and Mr Douglass on market value, or gross development value, was over whether the appropriate yield was 3.75% or 4.25%. (T4/19) He too accepted that what reasonable valuers would agree might well lie in between these two figures, although because of lack of stock developers were paying “quite keen yields” (i.e. low yields), which had come down from 4.5% two years ago (i.e. in October 2017) to 3.5 or 3.75%. (T4/20-1). He said he had not valued the Florala Alternative and answered Mr Douglass’s second report (it arrived so late in the day), although he had seen Mr Moren’s two reports. (T4/25)

311. Further, he accepted that the notion of “development profit”, in the context of residual valuations, is a percentage (in this case 17.5%) but it is not strictly profit. Rather, as he put it in an exchange I had with him:

“A ... the developer’s profit reflects the loss that he has made prior to that by holding these assets and applying empty rate and so on. So that is where the developer’s profit is very fundamental, because our valuation date is a date when it is actually PC’d but before that, there has obviously been substantial costs in terms of void periods, you know, lettings and so on.

“Q: Does that mean developer’s profit is a bit of a misnomer? It is more like sort of, recovery against costs incurred?”

“A: It is a march [sic – presumably “match”] between the two. Which is one of the reasons why the RICS, you know, the residual method is quite a complex one ... so it is trying to reflect, you know, the costs and time of doing the development, any void periods before hand and then, the return from doing the development. ... To get to that extra profit [i.e. attributable to building a larger hotel, or hotel with extra rooms] you have to do the valuation before and after and then the difference between the two is what we call the super profit from the rooms which is beyond that of the developer’s profit so that is the standard approach to get to that answer because obviously without doing so, you cannot get there.”

Conclusions on valuers’ evidence and negotiating damages

312. In my judgment, in the light of Mr Moren’s analysis of the Florala alternative, and Mr Douglass’s two reports, to both of which of there was very little challenge, and both of which were coherent and sensible, the likely uplift in profit which Florala was going to be able to make by building the hotel as it did, rather than by having to carry out a scheme along the lines of the most profitable Florala Alternative (i.e. with the dual entry lift scheme) was in the region of at least £1.1 million. That is to say, it would land up with a hotel worth £14.8 million rather than the value of £15.9 million of the hotel as built.

313. I use this figure (and say “at least” £1.1 million) for the following reasons:

- (1) The income capitalisation approach (which yields this figure, rather than the lower figure of £1 million) is the way that a purchaser would normally assess how much to pay: Mr Douglass’s evidence to this effect on this point was not challenged, and nothing in Mr Kirkpatrick’s evidence contradicted it.
- (2) I accept Mr Kirkpatrick’s evidence in cross-examination that up to and since January 2017, there has been an excess of demand over supply, such that hotel purchasers were and are prepared to pay a capital price which reflects a lower yield

than the 4.25% posited by Mr Douglass in his report, and more in the region of 3.75% to 4%. This means that Mr Douglass's valuations, both of the hotel as built, and of the Florala alternative, are both a little on the low side (by a factor of about 1.1).

- (3) I reject the suggestion (urged upon me by Mr Wonnacott Q.C.) that I should take as the relevant indicator the "developer's profit" of 17.5% on the total construction costs (which would be about 17.5% of £1 million or so on Mr Kirkpatrick's evidence), because it is plain from Mr Kirkpatrick's evidence above that this "developer's profit" is just a notional amount – and I emphasise notional – to compensate the developer for the risks (past and future) he undertakes in carrying out the development: it is not the same as the net total benefit he expects to obtain from the development.

314. The question therefore is, what percentage of the £1.1 million uplift would Florala and Beaumont, acting reasonably, have agreed that Beaumont should receive in return for its giving up the rights to light that have been infringed? The percentages of the profits awarded in the cases drawn to my attention range from 5% (*Wrotham Park Estate Co Ltd. v. Parkside* [1974] 1 WLR 798) to 29% (*Tameres (Vincent Square) Ltd v. Fairpoint Properties (Vincent Square) Ltd (no. 2)* [2007] 1 W.L.R. 2167), but each case depends on its facts.

315. Mr Fetherstonhaugh Q.C. has urged upon me that I should split the expected profit 50/50 between Beaumont and Florala, but I reject this suggestion, for the reasons explained by Gabriel Moss Q.C. in *Tameres* (supra at paragraph 34). That is to say, the proposed share of the profit must not be so high as to put the developer off the relevant part of the development, and so a figure of 50% is likely to be too high, because if the development costs are higher than expected, the developer's share will be *pro tanto* reduced, whereas the non-developer still gets his 50%. A more realistic starting figure, as held in *Tameres*, is one third, or 33.3%, which will give the developer enough slack to absorb any costs over those which he expects, but the other party a sufficient and reasonable pay-off.

316. In my judgment, in this case a figure of 33.3%, subject to the small reduction below, would be appropriate, and would give, so far as possible, a fair equivalent for the refusal of an injunction. This is because:

- (1) Florala was obviously very keen to press ahead with the development of a 27 apartment hotel to the design it eventually constructed. Hence, it built it in the face of Beaumont's clear and repeated warnings that it was doing so at its own risk, and despite Beaumont's putting forward a scheme, in August or September 2017, which would not cause interference with its lights.
- (2) There was no realistic use to which Florala could put the property other than developing a hotel, because the City of London had already rejected Florala's previous proposal to convert the building into residential property, and it was unlikely to get permission for any office use which suited it.
- (3) As shown by Mr Agmon's first note to Florala's board on 30 January 2015, he took the view that there was "*a massive contingency buffer*" to cover unforeseen events.
- (4) Florala was prepared, even as an opening shot, to offer Beaumont £155,000 before it saw the rights of light deed.

- (5) Florala's development directly and immediately affected Beaumont's property, and was likely to do so for the balance of Beaumont's term under its lease. The position is different from that in *Wrotham Park*, where the plaintiff was unlikely to be directly affected by the development in breach of restrictive covenant.
- (6) A figure of one third would not be out of all proportion to Beaumont's actual loss (i.e. £240,000).
- (7) Mr Wonnacott Q.C. has not urged any particular reason why, if one gets this far, the award should be anything less than one third.

317. However, two deductions need to be considered, because the additional profit of £1.1 million presupposes that the Florala works amounted to an actionable interference both with the windows on the ground floor, and also with the eastern window on the second floor in room 2.07, when in fact they did not. However, the first point would not, on Mr Webb's evidence in cross-examination (which was not challenged by Mr Macpherson), have made any material difference to the cutback (it would be "*extremely similar*" he said: T3/36). As to the second, he accepted that it was "*possible*" that the angle of the cutback, where it is 53 degrees, could be reduced to 41.6 degrees so as to be slightly shallower and thus allow for an interference with light to the ground floor (T3/34-35). However, again, no evidence was given by Mr Macpherson as to whether this was more than just a possibility.

318. Accordingly, in my judgment, on a rough and ready basis, I find that in a hypothetical negotiation, these two factors would have made only a small difference, so as to reduce the sum of £366,300 (i.e. 33.3% x £1.1 million) to **£350,000**. Further, standing back, this in my judgment "feels right", and represents a fair deal. If, therefore, an injunction is not to be granted, this is the sum which I find should be awarded to Beaumont by way of negotiating damages. It is common ground that this is an alternative to, rather than in addition to, compensatory damages.

Postscript

319. In his comments on receiving this judgment in draft, Mr Wonnacott Q.C. very properly pointed out that I had not addressed his argument in written opening and closing submissions, namely that in *Coventry v. Lawrence* [2014] A.C. 822, Lord Neuberger had said (obiter) in paragraph 101 that damages in lieu of an injunction in nuisance cases were usually (or rather, "*conventionally*") based on diminution in value damages, nor had I explained why an award of negotiating damages was the proper approach on the facts of this case. Indeed, in paragraph 131 Lord Neuberger pointed to certain factors which suggested that, arguably, such damages should be awarded at most only "*rarely*" in nuisance cases.

320. However, I remain satisfied that an award of negotiating damages in the amount I have awarded would be appropriate if an injunction is not to be awarded.

- (1) Lord Neuberger's comments were obiter and the point in question had not been argued before the court (see paragraph 131). Further, Lord Clarke (obiter) took a different view in paragraph 173, where he said he could not see why, in principle, an award of negotiating damages should not be available in a case of nuisance as in a case of trespass.

- (2) The question of negotiating damages has now been fully discussed by the Supreme Court in the judgment of Lord Reed (with whom Lady Hale, Lord Wilson and Lord Carnwath agreed) in *Morris-Garner v. One Step (Support) Limited* (supra) [2019] AC 649. The conclusion in paragraph 95(3) to (5) does not suggest that, in making an award of damages in lieu of an injunction, different principles should apply in a case of nuisance from one in trespass, or that one should start with the presumption that in nuisance such damages should be based on diminution in value. The principle is rather that where a claimant has lost a right because the court has declined to enforce it by injunction, it can, where appropriate, compensate him for the loss of that right by awarding to him the sum which he could reasonably have exacted as a condition of giving it up. In particular, I see no reason why there should be any difference in approach where the right taken away, such as a right to light, can properly be regarded a right which increases the value and enjoyment of one's property.
- (3) On the facts, it would be just to award Beaumont Business negotiating damages if an injunction were to be refused, rather than just diminution in value damages, because (a) there is, at its lowest, a good case for an injunction, for the reasons I give below, and (b) refusal of an injunction would result in its losing a valuable right which it wants to have and to use for the benefit of its property for a substantial period of time. Therefore, it could reasonably have asked Floralà to pay a reasonable fee in return for agreeing to the reduction in its light, and Floralà's building without its consent has deprived it of this fee and thus caused it a loss.
- (4) Further, I do not see why it should make any difference that, if I make such an award, the damages will be payable by Beaumont Business under the rights of light deed to Beaumont London. It was still Beaumont Business which was going to be affected by the reduction in light, and nothing in this arrangement would have made it unreasonable for Beaumont Business in a hypothetical negotiation to require a reasonable fee to be paid to it for giving up its rights. What it had agreed to do with any compensation was not a matter for Floralà, and anyway, given its very close connection to Beaumont London, there was nothing so unusual in the arrangement as to make an award of negotiating damages inappropriate.

Sixth issue: injunction

321. Finally, I turn to the question of whether I should grant an injunction.

The law

322. In *Coventry and others v. Lawrence and another* [2014] A.C. 822 (otherwise known as the *Fens Tigers* case), the Supreme Court, albeit obiter, discussed what should be the test for granting an injunction. All their Lordships disapproved of the rigid application of the "good working rule" that had been expressed by A.L. Smith L.J. in *Shelfer v. City of London Electric Lighting Co* [1895] 1 Ch. 287 at p322 to 323. That is to say, they disapproved the proposition that as a rule, a court should not allow a wrongdoer to purchase his neighbour's rights, leaving him with the nuisance, unless four requirements are met, i.e. (a) the injury is small, (b) it is capable of being estimated in money, (c) it can be adequately compensated by a small payment, and (d) the grant

of an injunction would be oppressive. Instead, these four requirements should not be a fetter on the court's discretion, although if they were all satisfied it would normally be right to refuse an injunction: but "*the fact that those tests are not all satisfied does not mean that an injunction should be granted*". See per Lord Neuberger at paragraph 123 (with whom Lord Mance agreed on this point at paragraph 167 and Lord Carnwath at paragraph 239). Lord Sumption at paragraph 161 (with whom Lord Clarke agreed on this point at paragraph 171) took a rather harder line on *Shelfer*, and said it was out of date.

323. As to what the correct test actually should be, there were two alternative ways in which their Lordships put the matter.

324. At paragraph 121, Lord Neuberger said:

"I would accept that the *prima facie* position is that an injunction should be granted, so the legal burden is on the defendant to show why it should not. And subject to one possible point, I would cautiously (in the light of the fact that each case turns on its facts) approve the observations of Lord Macnaghten in *Colls* [1904] AC 179, 193, where he said:

"In some cases, of course, an injunction is necessary – if, for instance, the injury cannot fairly be compensated by money – if the defendant has acted in a high-handed manner – if he has endeavoured to steal a march upon the plaintiff or to evade the jurisdiction of the Court. In all these cases an injunction is necessary, in order to do justice to the plaintiff and as a warning to others. But if there is really a question as to whether the obstruction is legal or not, and if the defendant has acted fairly and not in an unneighbourly spirit, I am disposed to think that the Court ought to incline to damages rather than to an injunction. It is quite true that a man ought not to be compelled to part with his property against his will, or to have the value of his property diminished, without an Act of Parliament. On the other hand, the Court ought to be very careful not to allow an action for the protection of ancient lights to be used as a means of extorting money."

325. At paragraph 122, Lord Neuberger continued:

"The one possible doubt that I have about this observation relates to the suggestion in the antepenultimate sentence that the court "ought to incline to damages" in the event he describes. If, as I suspect, Lord Macnaghten was simply suggesting that, if there was no prejudice to a claimant other than the bare fact of an interference with her rights, and there was no other ground for granting an injunction, I agree with him. However, it is right to emphasise that, when a judge is called on to decide whether to award damages in lieu of an injunction, I do not think that there should be any inclination either way (subject to the legal burden discussed above): the outcome should depend on all the evidence and arguments. Further, the sentence should not be taken as suggesting that there could not be any other relevant factors: clearly there could be."

326. At paragraph 167, Lord Mance said that he was “*broadly in agreement*” with Lord Neuberger on this point, subject to his own observation that different observations may apply in cases which involve the right to enjoy one’s home (paragraph 168).
327. On the other hand, Lord Sumption at paragraph 160, with whom Lord Clarke agreed at paragraph 171, approved the rather different way Millett LJ put the matter in a dissenting judgment in *Co-operative Insurance Society Limited v. Argyll Stores (Holdings) Limited* [1996] Ch. 286 at 305. Having explained the two different philosophies, that “*an award of damages reflects normal commercial expectations and ensures a more efficient allocation of scarce economic resources*”, as against “*the repugnance felt by those who share the view that it is an intolerable travesty of justice that a party should be allowed to break his contract at pleasure by electing to pay damages for the breach*”, Millett L.J. continued:
- “English law has adopted a pragmatic approach in resolving this dispute The leading principle is usually said to be that equitable relief is not available where damages are an adequate remedy. In my view, it would be more accurate to say that equitable relief will be granted where it is appropriate and not otherwise; and that, where damages are an adequate remedy, it is inappropriate to grant equitable relief”.
328. Lord Sumption concluded at paragraph 161 that there was much to be said for the view that damages are ordinarily an adequate remedy for nuisance, and an injunction should not usually be granted where conflicting interests are likely to be engaged. Lord Clarke added, at paragraph 170, that he would wish to reserve the question on whom the burden of proof should be placed on how the discretion to award damages in lieu should be exercised.
329. Lord Carnwath’s speech focussed on the potential relevance of the grant of planning permission in any given case, and expressed his preference for a more flexible test. But as to which was the more appropriate test, he simply said, at paragraph 245 that: “*While therefore I agree generally with the observations of Lord Neuberger and Lord Sumption on this aspect, I have three particular reservations*”. Those reservations, however, did not go to which of the two tests was the more appropriate.
330. Since *Fen Tigers*, the courts have adopted the more conservative alteration to previous law suggested by Lord Neuberger’s and Lord Mance’s approach, and not the wholesale jettisoning of *Shelfer* suggested by Lord Sumption and Lord Clarke. See the Court of Appeal’s decisions in *Higson v. Guenault* [2014] EWCA Civ 793 (at paragraph 51) and *Ottercroft v. Scandia Care Home Limited and another* [2016] EWCA 867, (at paragraphs 10 to 11 and 15 to 16); and the High Court’s decisions in *Rogers v. Humphrey* [2017] EWHC 3681 at paragraphs 54 to 71, and *Business Mortgage Finance 6 plc v. Greencoat Investments Limited and others* [2019] EWHC 2128 at paragraphs 96 to 102. I should add that in a case concerning an injunction to protect property rights, I would in any event prefer this approach, absent binding authority to the contrary. The issue in *Co-operative Insurance Society Limited v. Argyll Stores (Holdings) Limited* [1996] Ch. 286 at 305, whose test Lord Sumption and Lord Clarke approved, was whether to grant specific performance of covenants in a lease to force the defendant to

carry on business as a supermarket. In that context, Millett LJ's observations are entirely conventional, but it would be another thing to carry them over into injunctions to protect property rights.

331. I therefore reject the test that Mr Wonnacott Q.C. advanced in his oral closing submissions, namely that in order to grant an injunction I would have to be satisfied that Florala committed a deliberate breach of Beaumont's property rights, knowing that that is what it was doing. This might possibly have been appropriate if, as suggested by Lord Sumption and Lord Clarke, the default position should be damages and not an injunction, but it is not the approach approved in Lord Neuberger's speech, which places the legal burden on the defendant to show why an injunction would not be appropriate.

Beaumont's submissions on the facts as against Florala

332. One of the points Mr Wonnacott Q.C. takes in answer to Beaumont's claim for an injunction is that SACO has not been joined to these proceedings. I shall deal with this point last, and for the time being I shall focus on the position as between Beaumont and Florala.

333. Basing himself on Lord Neuberger's approach, Mr Fetherstonhaugh Q.C. contends that Florala has failed to discharge the burden upon it, in particular for the following reasons:

- (1) There was nothing inadvertent or mistaken about its conduct: it went ahead with the works knowing that its rights of light surveyor had agreed that they would reduce the light at Beaumont's property, that Beaumont had a reasoned objection to this, and that it was carrying them out at its own risk because Beaumont had threatened to apply for an injunction.
- (2) It was not necessary for Florala to carry out its development in such a way as to reduce Beaumont's light: it could simply have modified its plans so as to reduce the interference.
- (3) The reason that Florala did not modify them was simply a desire to make as much profit as possible from the development.
- (4) Beaumont has an established business at the property, and its lease allows it to remain in occupation until 2045.
- (5) Beaumont simply does not want damages in lieu of an injunction.

334. In my judgment, all these points are made out on the facts.

335. The first two points and last two points are clear from my findings above. In particular, it is clear that in the two principal to principal meetings in August 2017, Beaumont specifically put to Florala an alternative way of developing its hotel with a cutback which would have avoided the interference with light, but Florala simply ignored this and carried on, notwithstanding repeated correspondence saying that it was doing so at its own risk.

336. The third point (Florala did not make the alteration as it wanted to make as much profit as possible) is the natural inference to draw from the first two, and there was nothing in the evidence to displace it.

337. Further, in my judgment, when Florala saw the rights of light deed, it decided not to make any alteration even though, at least by the time it began works, it realised that there was still a risk of an injunction being granted. Thus, by 7 July 2017, Clarke Willmott were no longer pursuing the line originally taken by Point 2 that the rights of light deed necessarily defeated a claim, but were contending only that given the deed, it was very difficult to say that the rights of light were important to Beaumont. Further, at T2/118, Mr Agmon said *"And after we tried for years to reach a commercial agreement and had some dialogue, some dialogue, and after I saw the right of light deed and was advised what it means, I did not think that the risk for injunction, or actually for litigation, is high"*. Florala did not waive privilege, and so we do not know what advice it actually received. However, it is clear from this answer that Mr Agmon knew that there was some risk involved, but still went ahead.

Florala's submissions

338. For Florala, Mr Wonnacott Q.C. led with the argument which I have already rejected, that this was a ransom claim. He also contended that an injunction should not be granted because:

- (1) Beaumont put up its sixth floor at a time when it knew that Luri was selling the Florala property;
- (2) Beaumont could just increase its light by 20% by putting in new windows;
- (3) If damages were awarded, they would belong to Beaumont London LLP, not Beaumont Business;
- (4) Beaumont did not oppose Florala's application for planning permission.

339. However, I reject these contentions:

- (1) There is no equivalence between Beaumont's putting up an extra floor in 2011 to 2012, and Florala's development, because Luri consented to Beaumont's development, whereas Beaumont opposed Florala's. Further, there was no evidence that Florala placed significance on its actual rights to light over the lightwell (as opposed to a claim for compensation), which is not surprising given the alterations it made as part of the development, in particular to the windows in the elevation overlooking the lightwell.
- (2) As said above, it is no answer to liability in nuisance by wrongful interference with light that a claimant can put in better windows so as to replace the light that has been lost. Likewise, I do not see why this should make any difference to whether an injunction should be granted. Beaumont is entitled *prima facie* to be put into the position it should always have been in, that is to say, with its lights protected, and the right to put in better windows if it so chooses.
- (3) Beaumont London and Beaumont Business are closely related entities, and nothing turns on the fact that, for their own internal purposes, they have agreed that the right to compensation is to belong to Beaumont London for it to decide to whom it should be paid; nor has it been suggested why anything should turn on this.
- (4) Had Beaumont been seeking a demolition of the entire hotel, or a cutback that would make it inoperable, then the fact that the hotel has planning permission, which Beaumont did not oppose, might have been significant. But here, all Beaumont is seeking is a relatively small cutback, which will result in the loss of one or two

rooms (depending on how the property is reconfigured) and which will not undermine the purpose of the grant of planning permission.

Conclusion on position as between Beaumont and Florala

340. Accordingly, as between Beaumont and Florala, I hold that it would be appropriate to grant an injunction ordering Florala to cut back its development in accordance with the cutback plan attached to the Amended Particulars of Claim, subject to a point I mention below. I do so because, for the reasons I have given (i.e. Florala went ahead with the development knowing of the risk that it was taking and ignoring the offer to develop with a cutback) it acted in my judgment in a high handed, or at least unfair and unneighbourly, manner. Further, applying the *Shelfer* criteria, the injury Beaumont will sustain is not small, nor is it easily quantifiable.

341. Further, and importantly, whether one adopts Lord Macnaghten's approach or the modified *Shelfer* approach, Florala does not contend that it would be oppressive to order a cutback, nor indeed has it put in any evidence as to the expenditure to which it would be put were it to carry it out. No doubt, if it has to cut back, it will lose some of the profit from letting out the hotel which it has gained by interfering with Beaumont's rights to light, but there is nothing oppressive in that. But there is no evidence that the costs of re-building in accordance with the cutback will be so great as to make the order oppressive.

342. In this context, Mr Wonnacott Q.C. very fairly conceded that Beaumont's failure to apply for an interim injunction was not a "strong" factor in Florala's favour. As I understand it, he conceded this because of the Court of Appeal's decision in *Mortimer v. Bailey* [2005] 2 P&CR 9, where Peter Gibson LJ observed, at paragraph 30, that he doubted that a claimant who failed to apply for an interim injunction "*should generally be debarred*" from obtaining a final injunction, because depending on the circumstances it might be entirely reasonable for him, having put the defendant on notice, to proceed to trial instead, without taking the risk of expending money wastefully in seeking interim relief. In many cases, of course, a claimant who does not seek an interim injunction takes the risk that it will be oppressive at trial to order a defendant to pull down a building which he has put up in the meantime, but where there is no such oppression, the failure to apply for an interim injunction, at least in a case such as this, is not in my judgment a factor of great weight.

Scope of the cutback

343. The one point to which my proposed order as against Florala is subject is that the cutback to the Amended Particulars of Claim wrongly presupposes that there is a prescriptive right to light for the window in room 2.07, and that there was a nuisance to the ground floor. Although Mr Webb doubted that either point would make much difference, the point has not been considered in detail, and I shall accordingly order that the cutback should be re-designed so as to allow Florala's building (a) to interfere with the light to this window, and (b) to continue to interfere with the light to the ground floor to the extent that it currently does so, save that it can interfere with the light to the what was the lavatory window.

The position as between Beaumont and SACO

344. Mr Wonnacott Q.C.'s point on this was that SACO was in possession of the premises which Beaumont was seeking an order to knock down in part, and therefore SACO had to be a party to the proceedings, or at least notified of them so that it could apply to be joined to them. Mr Fetherstonhaugh Q.C. resisted this: his position was that it was unnecessary to join SACO, and he pointed out that in *HRUK II (CHC) Limited v. Heaney* [2010] EWHC 2245, His Honour Judge Peter Langham Q.C. had granted an injunction even though there were evidently tenants in the building. However, it is not possible to tell from the report whether they had been informed of the proceedings.
345. At trial, no doubt because the point was taken so late, neither party drew my attention to any particular cases (save the *HRUK* case) or rules of court to justify their respective arguments on the questions it raised. Accordingly, by note of 10 January 2020, I asked the parties to make written submissions by reference to authority on whether I could grant an injunction which would affect SACO even though Beaumont has not notified it of its claim or joined it to these proceedings.
346. In response, Mr Fetherstonhaugh Q.C. sought to rely on the Court of Appeal's decision in *Brew Brothers Limited v. Snax (Ross) Limited* [1970] 1QB 612, a claim in nuisance brought against both the owners and the tenants of property arising from a dangerous flank wall, in which Sachs L.J. held at pages 638-9 that once liability attaches to an owner, it could not be "*shuffled off*" against third parties by the owner agreeing with the tenant that the latter should carry out the necessary remedial works. But in *Brew Brothers*, both the owner and tenant were parties to the action, so the case is not in point.
347. He also contended that it was incredible that, as suggested by Mr Agmon, SACO did not know about the proceedings, as it had acquired its lease on 7 December 2018. I accept that this is unlikely, but it does not answer the point that there is no direct evidence on the point, still less any evidence that it has agreed to be bound by any order made against Floralá. He also contended that Beaumont would have no cause of action against SACO, but again this does not meet the point that its interest in the property will be directly affected by any order.
348. For his part, Mr Wonnacott Q.C. drew my attention in particular to *Hodson v. Coppard* (1860) 29 Beav. 4, and *Marengo v. Daily Sketch* [1948] 1 All ER 406. In the first of these, the court granted an injunction against the purchaser of property who had given a restrictive covenant not to use it as a bakery, but not against his tenant who was using it as such, and who had not been joined to the proceedings. (The latter case is less on point, because it is merely authority that an injunction should not be worded so as to suggest it has been made against a party when it has not.)
349. In my judgment, Mr Wonnacott Q.C. is right in saying that I cannot make an order which directly affects SACO's known interest in the property without hearing what SACO have to say about it. An injunction, after all, is a discretionary remedy, and one of the points that can go to the discretion is the effect on third parties. That being so, SACO, as long leaseholder, must be entitled to make representations as to why it

would be inappropriate to make an order for an injunction which affects its interest, even though Florala can have no complaint about the grant of an injunction.

350. However, I do not accept that it follows that because SACO have not so far been joined it is now too late for anything to be done about the problem, especially because the lease to SACO was not revealed to Beaumont until disclosure, and even then Florala took no point about the need to join SACO until just before trial.

351. Accordingly, in my judgment, the correct way forward is (a) to make a declaration that as between Beaumont and Florala, Beaumont is entitled to an order that the hotel be cut back in accordance with the cutback described above; and (b) to order that, if Beaumont still wants to obtain an order for an injunction (rather than taking the award of damages I have made), it must join SACO to these proceedings pursuant to CPR rule 19.2, which provides that:

“The Court may order a person to be added as a new party if:

- (a) It is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
- (b) There is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the Court can resolve that issue.”

352. This will achieve the objective of enabling SACO to be heard on whether an injunction should be granted, which is a legitimate reason for resort to rule 19.2 (see *Price v. Registrar of Companies* [2018] 1 W.L.R. 738 at paragraph 60 per Sir Terence Etherton M.R.); and there is no reason in principle why SACO could not be joined after judgment (see *Dunwoody Sports Marketing v. Prescott* [2007] 1 W.L.R. 2343).

Conclusion

353. Accordingly, I give judgment for Beaumont on its claim, and make a declaration that as against Florala it is entitled to an injunction in the terms set out above, and that, if so advised, it may join SACO under rule 19.2 to these proceedings so as to obtain an injunction which binds SACO. If it elects not to join SACO, or if it does but in the event it does not obtain an order that binds SACO, then I order that Florala must pay to Beaumont the sum of £350,000, together with interest at a rate and for a period which I shall determine on receiving further submissions.

354. Finally, I would like to thank counsel for their lucid and forceful written and oral submissions.

APPENDIX 1
EFZ ANALYSIS OF BEAUMONT'S LIGHT PRE-WORKS AND POST-WORKS

- (1) R1-4/201 is G.07-10; R1-4/202 is 1.07-10; R1-4/203 is 2.07-10; R1-3/204 is 3.07-10 (rooms differently partitioned at different times); and R1-3/205 is 4.07-10 (rooms differently partitioned at different times).
- (2) The floor measurements below, agreed by the rights of light surveyors, were slightly inaccurate, as agreed by Mr Jones and Shortall. The total should be 5,739 sq.ft.

Room/ Floor	Whole room	Previously well lit		Post works well Lit		Area loss	EFZ				Total EFZ loss
	Sq ft	Sq ft	%	Sq ft	%	Sq ft	Front,	1 st ,	2 nd ,	3 rd	

Grd F											
R1/201	400.2	9.9 sf	2.5%	7.7sf	1.9%	2.2 sf	2.2	0	0	0	
R2/201	155.8	4.2 sf	2.7%	3.5 sf	2.2%	0.7 sf	0.7	0	0	0	
R3/201	153.6	3.5 sf	2.3%	2.8 sf	1.8%	0.7 sf	0.7	0	0	0	
R4/201	405.5	14.9sf	3.7%	14.1sf	3.5%	0.8 sf	0.8	0	0	0	
Totals/ Avg %	1,115	32.5sf	2.87%	28.1sf	2.5%	4.4 sf	4.4	0	0	0	6.6
1st											
R1/202	408.5	35.8sf	8.8%	21.2sf	5.2%	14.6sf	14.6	0	0	0	
R2/202	79.6	19.5sf	24.5%	12.8sf	16.1%	6.7sf	6.7sf	0	0	0	
R3/202	150.1	19.4sf	12.9%	14.7sf	9.8%	4.7sf	4.7sf	0	0	0	
R4/202	401.6	29.8sf	7.4%	24.7sf	6.2%	5.1sf	5.1	0	0	0	
Totals/ Avg %	1040	104.5sf	10%	73.4sf	7%	31.1sf	31.1	0	0	0	46.6
2nd											
R1/203	410.9	56.7sf	14.3%	42.3sf	10.3%	16.4sf	16.4	0	0	0	
R2/203	153.4	35.0sf	22.8%	25.1sf	16.4%	9.9sf	9.9	0	0	0	
R3/203	155.9	38.4sf	24.6%	26.5sf	17%	11.9sf	11.9	0	0	0	
R4/203	404.0	59.8sf	14.8%	45.5sf	11.3%	14.3sf	14.3	0	0	0	
Totals/ Avg %	1,124	161.9sf	14.4%	139.4sf	12.4%	52.5sf	52.5	0	0	0	78.75
3rd											
R1/204	375.9	80.4sf	21.4%	68.3sf	18.2%	12.1sf	12.1	0	0	0	
R2/204	89.1	59.4sf	66.7%	45.sf	50.7%	14.2sf	0	0	0	14.2	
R3/204	557.0	147.8sf	26.5%	102.3sf	18.4%	45.5sf	37	8.6	0	0	
Totals/ Avg %	1022	287.6sf	28%	215.8sf	21%	71.8sf	49.1	8.6	0	14.2	85.8
4th											
R1/205	393.5	142sf	36.1%	113.5sf	28.8%	28.5sf	0	28.5	0	0	
R2/205	314	204.9sf	65.3%	183.4sf	58.4%	21.5sf	0	0	0	21.5	
R3/205	404.3	190.3sf	47.1%	171.9sf	42.5%	18.4sf	0	18.4	0	0	
Totals/ Avg	1112	537.2sf	48%	468.8sf	42.1%	68.4sf	0	46.9	0	21.5	52.3
ALL	5413	1124.7	20.7%	925.5sf	17.1%	228.2sf	137.2	56.5	0	35.3	270