

**Ultraworth Ltd v. General Accident Fire & Life  
Assurance Corporation [2000] EWHC Technology 172  
(27th January, 2000)**

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**TECHNOLOGY AND CONSTRUCTION COURT**

**BEFORE HIS HONOUR JUDGE RICHARD HAVERY Q.C.**

<b>BETWEEN</b>	<b>ULTRAWORTH LIMITED</b>	<b>Claimant</b>
	<b>and</b>	
	<b>GENERAL ACCIDENT FIRE &amp; LIFE ASSURANCE CORPORATION</b>	<b>Defendant/Part 20 Claimant</b>
	<b>and</b>	
	<b>BUHLER LIMITED</b>	<b>Part 20 Defendant</b>

Case number 1998 TCC 518

Dates of Trial: 15th/ 16th/17th/18th/22nd November 1999

Date of Judgment: 27th January 2000

Gary Cowen for the Claimants ( Solicitors Bude Nathan Iwanier)

Kirk Reynolds Q.C. and Martin Hutchings for the Defendant ( Solicitors  
:Iliffes Booth Bennett )

Stephen Bickford-Smith for the Part 20 Defendant (Solicitors : Wedlake  
Bell )

**JUDGMENT**

1. This is a claim for damages for breaches of repairing covenants contained in a lease (which I shall call "the lease") dated 5th July 1973 of

the whole of a five-storey office building called Enterprise House, situated at 19 Station Road, New Barnet. The building was constructed in the early 1970s. The claim is a terminal dilapidations claim, the lease having come to an end by effluxion of time on 4th July 1998. The lease was made between Pebble Hall Investments Limited and Chase Manhattan Bank and was for a term of 25 years from 5th July 1973. The initial annual rent payable under the lease was £107,000. The defendant took an assignment of the lease pursuant to a licence to assign dated 30th June 1977 and was registered as owner of the leasehold interest on 7th July 1977. On 9th May 1978, the defendant underlet the fourth and fifth floors of the building to Buhler-Miag (England) Limited for a term expiring on 30th June 1998. By the underlease, Buhler-Miag covenanted to repair the interior of the demised premises. On 8th September 1994, Buhler-Miag assigned the underlease to its associated company, "Buhler", the part 20 defendant. By the licence dated 7th September 1994 to make that assignment, Buhler covenanted directly with the defendant to comply with the tenant's obligations in the underlease whether arising before or after the date of the assignment. On 14th February 1996, the freehold interest in the building was transferred to the claimant. On 1st July 1998, the part 20 defendant's underlease having expired by effluxion of time on the previous day, the claimant granted a new lease of the fourth and fifth floors of the building directly to the part 20 defendant for a term of 2 years from 21st August 1998. That lease contains a covenant on the part of the part 20 defendant to observe and perform the covenants contained in the expired underlease. On 24th March 1999, after the commencement of these proceedings, the claimant transferred its freehold interest in the building to Balcraft Properties Limited ("Balcraft") for a consideration of £1m. Balcraft subsequently obtained planning permission to convert the building, save for the ground floor, to residential use, and to convert the ground floor to self contained office suites.

2. By the part 20 proceedings, the defendant seeks to recover from Buhler such part of any damages found due from the defendant to the claimant as may arise from breach on the part of Buhler of its repairing obligations under the underlease.

3. It is common ground that at the determination of the lease the premises were not in the condition required by the repairing covenants. The dispute is as to the nature of the work that would be required to put the premises into that condition, and as to the quantum of the damage suffered by the claimant by reason of the breaches of those covenants.

4. The principal items of dilapidations relate to the combined air conditioning and heating system. There is also a separate central heating system. Apart from disrepair of those two systems and the plumbing, the cost of repair of all items is agreed at £39,900, and loss of rent for the period of repair is agreed at £30,288.

5. The claimant claims damages calculated on the basis of the cost of repairs plus loss of rent and expenses. The defendant relies on section 18(1) of the Landlord and Tenant Act 1927, which imposes a cap on the damages equal to the amount, which may be nil, by which the value of the reversion is diminished by reason of the breach of covenant. In this case, the claimant has not carried out any repairs, nor did it intend to do so at the expiry of the term or at any time thereafter. On the authorities that have been cited to me, I conclude that in a case such as the present the *prima facie* measure of damages for breach of a covenant to deliver up the premises in repair is diminution in the value of the reversion. The cost of repairs is, however, relevant in this case to question whether, and if so by how much, the value of the reversion has been diminished. I thus have to decide two basic questions: first, what is the notional cost of repairs, and second, what is the amount of any diminution in value of the reversion.

6. As to the former question, a point of principle arises from the difference between the opinions of the two engineers specialising in building services who gave expert evidence before me. Mr Geoffrey Wilkinson gave such evidence on behalf of the claimant. Mr Rex Welch gave such evidence on behalf of the defendant. It is common ground that the air-conditioning and heating system was out of repair. Mr Wilkinson proposed substantial renewal of the system; Mr Welch proposed re-conditioning. Mr Wilkinson costed his proposals in all at £420,500, approximately four times Mr Welch's figure and more than two-fifths of the price paid for the reversion. Mr Kirk Reynolds, Q.C., for the defendant, submitted that Mr Wilkinson's proposals went beyond the obligations in the repairing covenants.

7. The repairing covenants in the lease and those in the underlease were not in identical terms. Those in the underlease expressly provided for renewal whereas those in the lease did not, save for a reference to small parts such as washers. It was not suggested that the covenants in the underlease were of wider ambit than those in the lease.

8. In the lease, covenant 3(6) on the part of the tenant provides, so far as material, as follows:-

From time to time and at all times during the said term well and substantially to repair cleanse and keep in good and substantial repair and condition the demised premises and all additions thereto including the foundations thereof all parts of the gas electricity water central heating air conditioning plant lift and drainage systems and also including the windows...

Covenant 3(10) on the part of the tenant provides, so far as material, as follows:-

At the expiration or sooner determination of the term quietly to yield up the demised premises in such repair and decoration as is required by this Lease...

In the underlease, covenant 2(5) on the part of the tenant provides, so far as material, as follows:-

From time to time and at all times during the said term well and substantially to repair maintain renew paint paper cleanse and keep in good and substantial repair and condition (whatever their present condition) the interior of the demised premises and every part thereof and all non-load bearing walls within the demised premises all parts of the gas electricity and water system central heating air conditioning plant and drainage systems within the demised premises and also including the doors...

Tenant's covenant 2(8) provides for yielding up of the demised premises at the determination of the term in such good and substantial repair and condition as shall be in accordance with the tenant's covenants contained in the underlease.

9. Mr Reynolds submitted that the covenant contained in clause 3(6) of the lease was not a wide covenant, pointing to the absence of a reference to renewal otherwise than in relation to specific items such as washers. I do not consider that the presence or absence of a reference to renewal makes any significant difference in this case: the covenant is an ordinary covenant to repair, which must include renewal of parts; and it is a covenant to repair the whole premises, of which the system in question is a part, albeit an important part. The air conditioning and heating system is not the subject of a separate covenant. Mr Reynolds submitted that one of the principal ways of determining whether a repair, which appears to involve renewal, falls within a repairing covenant is to consider the nature, extent and cost of the proposed remedial works, the value of the building and its expected lifespan (see *Holding & Management v. Property Holding and Investment Trust Plc* [1990] 1 EGLR 65 at 68G per Nicholls L.J.). Ultimately, the question is one of degree, and is answered by asking whether the ordinary speaker of English would consider the word "repair" as appropriate to describe the work which has to be done (*Hoffman J. in Post Office v. Aquarius* 1985 2 EGLR 105).

10. In *Holding & Management* ib 67F the remedial work in question, known as the McHallam scheme A, and the reasons why it was recommended, appear from the following passage:

These reports recommended the removal of all the brickwork down to the second floor and then recladding with the insertion of stainless steel angles to support the brickwork, together with expansion joints, compression joints and weepholes.

McHallam summarised why they recommended such extensive remedial work:

The problems inherent in the building are so numerous and varied that it is our opinion that partial repair, such as refixing of the slipbricks, is only delaying the date when major repairs are necessary. Furthermore, since faulty workmanship in the construction of supporting nibs and bearing of the bricks must remain suspect, there is no guarantee against failure of a brickpanel occurring at any time. Problems are further compounded by the lack of expansion joints in the brickwork, such that any repair to the vertical cracks would manifest themselves probably immediately after repair. The mortar quality and the cracking would also allow the ingress of water into sealed cavities, which in the event of a hard frost could cause further cracking, spalling and possible failure of the brickwork.

Nicholls L.J., with whom Lloyd & Farquharson L.JJ. agreed, said this at p.68 F:

The first question to be answered is whether McHallam scheme A constituted repair within para 2 of the fifth schedule to the leases. It was common ground that in para 2 "repair" bears the meaning which it normally bears in leases. In such cases, the question is whether, having regard to all the relevant circumstances, the proposed works can fairly be regarded as "repair" in the context of the particular lease. As Hoffman J. said in *Post Office v. Aquarius Properties Ltd* [1985] 2 EGLR 105 at p. 107C:

In the end ... the question is whether the ordinary speaker of English would consider that the word "repair" as used in the covenant was appropriate to describe the work which has to be done.

Likewise, in the oft-quoted words of Sachs L.J. in *Brew Brothers Ltd v. Snax (Ross) Ltd* [1970] 1 QB 612 at p. 640:

It seems to me that the correct approach is to look at the particular building, to look at the state which it is in *at the date of the lease*, to look at the precise terms of the lease, and then come to a conclusion as to whether, on a fair interpretation of those terms in relation to that state, the requisite work can fairly be termed repair. However large the covenant it must not be looked at in vacuo.

Quite clearly this approach involves in every instance a question of degree...

Thus the exercise involves considering the context in which the word "repair" appears in a particular lease and also the defect and remedial works proposed. Accordingly, the circumstances to be taken into account in a particular case under one or other of these heads will include some or

all of the following: the nature of the building, the terms of the lease, the state of the building at the date of the lease, the nature and extent of the defect sought to be remedied, the nature, extent, and cost of the proposed remedial works, at whose expense the proposed remedial works are to be done, the value of the building and its expected lifespan, the effect of the works on such value and lifespan, current building practice, the likelihood of a recurrence if one remedy rather than another is adopted, the comparative cost of alternative remedial works and their impact on the use and enjoyment of the building by the occupants. The weight to be attached to these circumstances will vary from case to case.

This is not a comprehensive list. In some cases there will be other matters properly to be taken into account. For example, as in the present case, where a design or construction fault has led to part of the building falling into a state of disrepair, and the proposed remedial works extend to other parts of the building, an important consideration will be the likelihood of similar disrepair arising in the other parts of the building if remedial work is not undertaken there also, and how soon such further disrepair is likely to arise.

In *McDougall v. Easington District Council* (1989) 58 P & CR 201, 206, 207 Mustill L.J., with whom Stuart-Smith L.J. and Sir John Megaw agreed, said:

Nor do I think it necessary to attempt a complete reconciliation of the whole body of authority by means of a single statement of principle: for I believe that whatever particular formula one selects from the various judgments, the result in the present instance must be the same. It is sufficient to say that in my opinion three different tests may be discerned, which may be applied separately or concurrently as the circumstances of the individual case may demand, but all to be approached in the light of the nature and age of the premises, their condition when the tenant went into occupation, and the other express terms of the tenancy:

(i) Whether the alterations went to the whole or substantially the whole of the structure or only to a subsidiary part;

(ii) Whether the effect of the alterations was to produce a building of a wholly different character than that which had been let;

(iii) What was the cost of the works in relation to the previous value of the building, and what was their effect on the value and life-span of the building.

11. I consider the details below, but my conclusion in the light of the above authorities is that Mr Wilkinson's proposals do constitute repairs and fall within the ambit of clause 3(6) of the lease.

12. The next question I have to decide is whether renewal of the system as proposed by Mr Wilkinson is the only reasonable way to comply with the covenant.

13. The heating and air conditioning system has the trade name Versatemp. It operates in this way. Two boilers and a cooling tower on the roof of the building are connected by pipework to a heat exchanger on the roof of the building. Water circulates from the heat exchanger through coils in each of 150 units, 30 of them positioned around the perimeter of the office space on each of the five floors of the building, and back to the heat exchanger. Each individual Versatemp unit is connected to a flow pipe and a return pipe. Each unit contains a heat pump with its own refrigerant, and has a fan to draw air through the unit. Each unit can be set individually. When a unit is set to cooling mode, the heat pump operates to cool the air, and the heat so extracted from the air passes to the water flowing through the coil. When a unit is set to heating mode, the heat pump extracts heat from the water flowing through the coil and warms the air. There is also an air handling unit on the roof, which provides for the introduction of fresh air into the building.

14. In his report, Mr Wilkinson said that in his view the installation would last only two years even if re-conditioned units were installed, because other aspects of the system would continue to fail, and re-conditioned units have only 12 months guarantee attached. In his oral evidence he said that his estimate of 2 years was a balance of risks as to what might be the next major incidence of repair. He relied on standard projected lifetimes. Some things might fail within the period of 2 years. It was put to Mr Wilkinson that it was unnecessary to carry out substantial renewal of the system in the manner that he proposed. He said that on a continuing ownership basis, he would have advised his clients to replace only those items that needed replacement from time to time. But this being a dilapidations claim, he did not have that option: he had to give advice on a one-off basis.

15. Mr Gary Cowen, counsel for the claimant, submitted that the covenant would not be complied with if the Versatemp system needed frequent attention. He said that where one method would involve the continual re-doing of the same work from time to time and another method would provide a once and for all cure, the court should hold that the former is not a proper performance of the covenant. He relied on *Elmcroft v. Tankersley-Sawyer* [1984] 1 EGLR. 47, 49B, where Ackner L.J., with whom Watkins L.J. agreed, said:

The damp-proof course, once inserted, would on the expert evidence cure the damp. The patching work would have to go on and on and on, because, as the plaster absorbed (as it would) the rising damp, it would have to be renewed and the cost to the appellants in constantly being involved with this sort of work, one would have thought, would have outweighed easily the cost in doing the job properly. I have no hesitation in rejecting the submission that the appellants' obligation was repetitively to carry out futile work instead of doing the job properly once and for all.

In the instant case, I am by no means satisfied that the cost comparison is the same as in *Elmcroft*. Nor would I describe maintenance of an elderly but working system as futile work. Mr Cowen also referred me to *Stent v. Monmouth District Council* (1987) 54P & C.R. 193. That case related to the front door of a house that let in the rain. The door had been repaired with limited success on a number of occasions before being replaced by a self-sealing aluminium door which gave no further problems. Stocker L.J., said (p. 209) :

Accordingly, in my view and upon those authorities, in this case the repair carried out in 1983 by the installation of a purpose-built, self-sealing aluminium door was one of the methods which could have been adopted much earlier, and which in my view should have been adopted. Of course, it does not follow that the self-sealing door is the only sensible way in which that object could be achieved. There may well have been others, but in my view the obligation under the covenant in this case was one which called upon the appellants to carry out repairs which not only effected the repair of the manifestly damaged parts but also achieved the object of rendering it unnecessary in the future for the continual repair of this door.

Sir John Arnold, P. agreed. He said (p. 210) :

Accordingly, in my judgment, the approach to be adopted is that which my lord has described, and it is plain that if all that was done to the door which stood in need of repair was to patch it or even to renew it and to leave, when so doing, the cause of the damage, which was the absence of any agent to defeat the collection of the rotting water beneath the door, then one was not doing that which the sensible, practical man would have advised as a sensible way of dealing with the problem. Accordingly, on the true construction of this covenant, it seems to me that the right conclusion is that the appellant council had the obligation of making good the design defect which caused the collection of water which occasioned the rotting, and that the failure so to do was in the circumstances a breach of the appellants' covenant for which they were properly required to pay damages by the learned judge.

Again, there is a distinction between that case and the instant case. A door would normally be expected to require practically no maintenance.

The door that was replaced was defective and its replacement was an obvious and cost-effective way of dealing with the problem, no cheaper effective alternative having been suggested.

16. In my judgment, the effect of the authorities in relation to the facts of this case is this. The claimant is not entitled to a new system simply because the system was new at the beginning of the term. It is sufficient to comply with the repairing covenant that the system be in good working order, i.e., that it be in repair, and work substantially as well as the original system did (or as it should have done) when new. It is not necessary that it should require as little maintenance as a new system. Whether the covenant is complied with is a question of fact and degree.

17. It is common ground that if there is more than one method of repair which a reasonable practical surveyor would support, then it is for the covenantor to choose which method of repair to adopt. I reach the conclusions that follow in the light of those propositions.

18. I turn now to consider the notional cost of repairs required by covenant 3(6). Mr Wilkinson considered that the only viable option was to replace those parts of the system that were more than 10 years old. The units (as opposed to spare parts) were no longer manufactured, and Mr Wilkinson considered that all 150 units should be replaced with their modern equivalent. He also considered that the two boilers, the tower pumps, the air handling unit and the pipework should all be replaced, since they were more than 10 years old. Those parts replaced within the last 10 years, such as the cooling tower, the heating pumps and the boiler burners did not require replacement, in his view. The total cost of all that, plus two items to do with the central heating, he assessed at £420,500, and gave a breakdown of that figure, which included £198,000 for the supply of the new units, and an element of contractor's overheads and profits. The defendants agreed the global figure of £420,500 as quantum, on the assumption, which they did not accept, that all the action recommended by Mr Wilkinson was necessary.

19. Mr Welch considered that, so far as the units were concerned, it was sufficient to re-condition them. If all the units were re-conditioned, the cost of the re-conditioned units would be £92,250. He rounded that figure up to £100,000 to allow for the cost of disconnecting the units and re-connecting them. Mr Wilkinson's figure for draining down the system and disconnecting the existing units was £10,000, for installing new units £30,000 and for commissioning the new system £15,000. He said that he thought Mr Welch's figure ought to be more like £200,000 than £100,000, including shipping the units to and from the premises of the re-conditioner. He later accepted that the cost of shipping was properly included in Mr Welch's figure of £92,250. If one adds Mr Wilkinson's figures for draining down, disconnection, installation and re-commissioning (totalling £55,000) to £92,250, one arrives at a total of

£147,250. Mr Welch thought that in the case of re-conditioned units the work of disconnection and re-installation could be carried out at lesser cost than Mr Wilkinson's figure, though he accepted Mr Wilkinson's figure for the corresponding cost when new units were supplied. The difference between the two sets of figures is large: £55,000 compared with £7,750. I accept Mr Welch's evidence that new units, as opposed to re-conditioned units, might require some alteration of the pipe work, but it appears to be elsewhere that Mr Wilkinson allows for that since he has separate figures for the installation of new pipework. Mr Wilkinson's figure was supported by, though not based on, a quotation from a firm of maintenance contractors, Planned Maintenance Engineering Limited, whose quotation was close to his estimate. Mr Welch considered that the firm doing the re-conditioning would do the work more cheaply. Each unit would take one tradesman one hour to remove and one tradesman one hour to replace, with an additional hour for the tradesman's mate. "That would be the strategy", said Mr Welch. It was not clear to me why the position should be so different in the case of new units, where Mr Welch accepted Mr Wilkinson's figures.

20. Mr Welch's first mention of the reason for his uplift of £7,750 was given in his oral evidence, which followed that of Mr Wilkinson. It was not put to Mr Wilkinson. Mr Cowen submitted that since Mr Wilkinson's figures for draining down the system, disconnecting and connecting the units were agreed as figures, the defendant was not entitled to adduce evidence of lower figures, especially since those lower figures were not put to Mr Wilkinson. Mr Welch, in his first report, said this:

I acknowledge that the air conditioning units might well require repair to put them into a good and tenable condition, but Total Heating Ltd's report is insufficiently detailed to enable me to examine and consider the actual repairs required.

On the limited information available to me and subject to proof the real need for repair it would be appropriate to allow a global figure of £100,000 in order for the units to be overhauled.

The report of Total Heating Limited was attached to the schedule of dilapidations. Mr Welch attached to his report a quotation of £615 a unit from Temperature Limited, the manufacturer of the Versatemp units, for re-conditioning the units. It was only in his oral evidence that he explained that he was basing his figure of £100,000 on re-conditioning all 150 units plus an uplift for disconnection and re-connection.

21. I hold the defendants not to be bound by Mr Wilkinson's figure of £55,000 in relation to reconditioned units. I am in doubt whether £7,750 would be enough. Nevertheless, the claimants have failed to satisfy me

that the figure should be any higher in the case of re-conditioning all the units.

22. Mr Wilkinson inspected 75 of the 150 units and concluded that 45, or 60 per cent. of those inspected, were faulty. On the fourth and fifth floors, six units out of 15 inspected were faulty, i.e. 40 per cent. Mr Welch tested the heating effect, airflow and noise of 111 of the units subjectively and checked their appearance. He inspected the internal components of one of those units and found them to be sound and clean. Of the 111 units, he found 42 to be faulty, including 9 faulty units out of 22 he checked on the fourth floor. He also noticed excessive noise coming from other units. He considered that his results showed a reasonable level of agreement with those of Mr Wilkinson.

23. Mr Wilkinson considered that the units were at the end of their published life span of 15 to 20 years. The solution of re-conditioning was not an option. It would extend the life cycle of the parts renewed, but not of the other parts. The other parts he mentioned were the water coils and the cases. I reject his evidence that the cases were near the end of their life. He said that there could be corrosion or scaling of the water coils, since the system had been poorly maintained. He saw no evidence of corrosion of the coils; but pointed out that internal corrosion would not necessarily be evidenced externally. The specific defects that Mr Wilkinson had observed in the Versatemp units he accepted would all be put right by re-conditioning.

24. Mr Welch considered that the time to decide what to do with the water coils was when the unit was stripped down and examined in the workshop. The cost of such examination is not explicitly included in his estimate and is not in evidence, but I think it is implicit in his evidence that it is done when the unit is re-conditioned, but not separately charged for. If a coil did need replacing, the cost would amount to some £200. Mr Welch said that replacement of the water coil was unusual: if the internal surfaces are contaminated, the re-conditioner flushes the coil through with mild acid to return it to nearly new condition. Flushing is included in the quotation of £615.

25. I find that re-conditioning all the units would constitute a sufficient repair of the units. However, Mr Welch said that it was possible to repair individual units that had no more than one or two faults. No evidence as to the cost was put forward. I am not satisfied that the total cost of carrying out such work, together with replacement of units by re-conditioned units only where necessary, would reach or exceed Mr Welch's figure of £100,000. The claimants have failed to satisfy me that piecemeal repair of the units, and replacement of units by re-conditioned units where necessary, would be an uneconomic or unsatisfactory method of repair of the system.

26. As to the boilers, Mr Wilkinson said that they were old but in fair condition for their age. Nevertheless, it was his view that they could have reached the end of their useful working life, since the system operated with a small volume of water changing temperature rapidly, which would give rise to rapid changes of temperature of the back end of the boiler, leading to corrosion.

27. Mr Welch accepted that the boilers were theoretically near the end of their useful working life. But they were water tube boilers and did not have a back end. I accept that that is so. His recommendation was to examine the boilers to see if they did need repair, it not having been previously suggested to him that there was anything wrong with them. The claimants have not satisfied me that the boilers were out of repair.

28. Mr Wilkinson was of the opinion that since water treatment equipment had been installed only recently, there were likely to have been corrosion and a build up of scale over the years inside the pipe work. The pipe work could well have reached the end of its useful working life. There was evidence of past leaks, and some pipework had been replaced in the plant room area. He referred to normal life span data on steel pipework, which showed 25 to 30 years as the normal life span of properly maintained pipework. His estimate of the cost of renewing the pipe work of the Versatemp system (exclusive of an item of £5,000 mentioned below) was £50,000, plus 12½ per cent.

29. Mr Welch considered the pipework to be generally in a sound and well-maintained condition. I am not satisfied that the pipework generally required repairing or replacing. It was, however, common ground that the cold water make up pipe, the interior of which was exposed to the atmosphere, was corroded and needed to be repaired or replaced.

30. Mr Wilkinson included a figure of £5,000 estimated in the Total Heating report for re-insulation of pipe work in the tank room and renewal of hose reel pumps. He gave no evidence about the state of those items or as to the correctness of the figure of £5,000. Mr Welch said that the pumps appeared to be in sound condition. He agreed that there was a measure of disrepair to the pipework in the tank room, and made a provisional allowance of £1,000 for its repair, including some renewal. I accept that figure as the cost of repair of this item.

31. Mr Wilkinson said that the air handling plant was out of repair. The insulation was cracking and breaking up. The fan was vibrating, probably because of a faulty bearing. The fan should have been cleaned every three months. The filters were not properly fitted and were dirty. The casing of the equipment was bent, and there was unnecessary air leakage. The distribution grilles needed cleaning.

32. Mr Welch said that the internal lining of thermal insulation on the main door was split. It looked like recent damage, though it was hard to tell in the dark. He did not think it had occurred before the end of the lease. He did not consider the noise of the fan to be excessive and it did not sound to him as though there were a worn bearing. The filter arrangement required attention, there were leaks and there were doors that would not close properly. His evidence was based on his own observation made on 1st October 1999.

33. I am satisfied that at the time when the lease expired the casing of the air handling plant was distorted, that there was unnecessary leakage of air, and that the filters were not properly fitted.

34. Mr Wilkinson said that the air handling plant should be replaced at a cost of £10,000.

35. There is no mention of the air handling plant in the Scott schedule. All that the claimant says in the Scott schedule about the central heating, air conditioning and plumbing services is this:

DEFECT CLAIMED BY PLAINTIFF	PLAINTIFF'S REMEDY	COST CLAIMED BY PLAINTIFF
<p>Heating and air conditioning units are old requiring increasing expensive maintenance as spare parts are now difficult to obtain and need to be specifically manufactured. Sections of the system are no longer functional.</p> <p>Worn bearings to chiller unit fan shaft.</p>	<p>Renew worn fan shaft bearings to chiller unit. Replace central heating and air conditioning units with similar replacement equipment and generally overhaul, repair and renew other plumbing and ancillary equipment in accordance with report prepared by Total Heating Ltd on behalf of R E Smith Construction Ltd - copy attached to this schedule and cost £450,000 plus VAT and fees.</p>	<p>450000.00</p>

The Total Heating report does not mention the air handling plant, save for the heater battery, which is not an item pursued by the claimant. Accordingly, Mr Welch made no mention of the air handling plant (again save for the heater battery) in his report. He was never invited to say whether it needed replacement or to put a figure on repairs to it.

36. I am satisfied that when the lease expired the air handling plant needed repairing. I am not satisfied that it needed replacement. There is no evidence before me as to the cost of necessary repairs, and accordingly I am unable to include any such figure in the total cost of repairs.

37. Mr Wilkinson thought that the heat exchanger should be replaced because of its age. There was evidence of water leakage around its flanges. It was common ground that the efficiency of a heat exchanger is reduced when it becomes heavily scaled. It had been de-scaled, apparently since October 1998. Mr Wilkinson, unlike Mr Welch, thought that the de-scaling of a heat exchanger as old as this one was pointless. Neither expert was able to say what the actual state of the heat exchanger was; Mr Welch was of the opinion that the contractors having de-scaled it, they must have formed the opinion that that was worth doing; Mr Wilkinson was more cynical.

38. I am satisfied that the heat exchanger needed de-scaling when the lease expired. The cost was apparently £2,765. I am not satisfied that it was necessary to replace the heat exchanger.

39. There are two circulating pumps on the roof for the cooling tower. It was common ground between the experts that those pumps were leaking and corroded. Mr Wilkinson described them as being in "rather poor condition". He considered that they should be replaced; Mr Welch considered that the leakage and corrosion should be rectified. Possibly such leakage could be corrected by fitting new glands, but Mr Welch did not say how it could be corrected. The cost as stated by Mr Wilkinson was £5,000; Mr Welch had made a provisional allowance of £1,000 for remedial works. Neither expert indicated how he had arrived at his figure. I am not satisfied that more than £1,000 is required for this item.

40. Mr Wilkinson included in his report, without comment, an item "central controls: £15,000". The report of Total Heating Limited recommends the renewal of the control panel and controls. Mr Welch considered that they were in working order and not in poor condition. I find that this item does not require expenditure.

41. Mr Wilkinson described the insulation of the pipework as extremely poor. The remedial expense he put at £10,000. Mr Welch considered that there was a relatively small measure of pipework in the boiler room and tank rooms that required repairs. In the absence of particulars from the

claimant, he considered a provisional allowance of £1,000 appropriate for the necessary works. I think it reasonable to assess the cost of repair of this item as £1,000.

42. Mr Welch considered that a provisional allowance of £4,000 should be made for renewal of radiators and branch pipework in the main central heating system. That figure was not identified in the Total Heating report nor was the matter spoken to by Mr Wilkinson. I think it reasonable to allow this sum as part of the notional cost of repairs, particularly since I doubt whether the figure of £7,750 for installation etc. in relation to re-conditioned units is sufficient.

43. Mr Wilkinson also included a figure of £6,000 mentioned in the Total Heating report as an estimate for renewing Sadia hot water heaters for the hot water system and chemically cleaning internally the hot and cold water pipework. Mr Wilkinson gave no evidence about these items, or as to the correctness of the figure of £6,000. Mr Welch found the system to be satisfactory and did not agree that any remedial work was required. I am satisfied that it was not.

44. The sum I have arrived at, therefore, as the cost of repairs of the Versatemp system and the central heating system is £109,765, made up as follows:-

Units, £100,000;

Repair of pipe work , £1,000;

Heat exchanger, £2,765;

Cooling tower circulating

pumps, £1,000;

Insulation of pipework, £1,000;

Central heating system, £4,000.

All other items together are agreed at £39,900, making the total cost of repairs £149,665. However, the figure of £100,000 for the units I take as an upper limit, since repair of individual units, where possible, rather than their replacement, may represent a cheaper solution. In the event, as will appear, it is unnecessary for me to make any finding as to the precise figure.

## **DIMINUTION IN VALUE OF THE PREMISES: Marketing**

45. When it became apparent that the defendant did not intend to renew its lease, the claimant, by its director, Mr Leon Faust, who gave evidence before me, instructed agents to market the property for office purposes on what he described as a confidential up market exercise directed to a limited number of applicants. Mr Faust considered that that would increase the interest of such applicants in the property. He received an offer of £1.3m from a company called Artesian Challenger Plc. That company intended to convert the property to residential use, and withdrew its offer on being told by the planning authority that it was unlikely to obtain planning permission for such a conversion. No other offers were received.

46. Mr Faust then (in July 1998) instructed a local firm, Maunder Taylor, to seek tenants or to sell the property as a whole or in floors. The asking annual rent for tenancies was £7 per sq.ft; and for the sale of the property by floors, 125-year leases were offered at an asking premium of £250,000 per floor, each floor having a net area of about 5,211 sq.ft. There was little demand for the property. It appears that a firm of accountants and a recording studio expressed interest, probably in taking single floors. That appears from a letter dated 31st March 1999 from Maunder Taylor to Mr Nicholas Tubbs of Balcraft Properties Limited, in which it is stated that two parties, an accountant and a recording studio, having been attracted apparently by mention of a figure of £200,000 per floor for a long lease, failed to make offers because of the poor condition of the building and Ultraworth's lack of desire to invest in the building as the cost of changing the exterior to create an attractive front to draw people to it would be too expensive; and with no sign of the market improving, and the adjoining buildings remaining vacant, such a change seemed pointless. That letter was written at the request of Mr Tubbs with a view to his using it to persuade the local planning authority that there was no demand for office accommodation. Mr Cowen invited me to view the letter in that light, and submitted that there was demand for office accommodation. In that respect, he relied on the letter; and indeed there was no dispute that the accountant and the recording company had expressed interest.

47. Nevertheless, I do not find the letter of assistance. Mr Faust said, and I accept, the following. First, that he had no recollection of instructing Maunder Taylor to mention the figure of £200,000; second, that he agreed with Mr Poulter, the writer of the letter, that the building should have a new fascia; and third, that he told Mr Poulter that he did not have the wherewithal to spend money on refurbishing the interior of the building.

48. Mr Faust said that prospective tenants were put off by the amount needed to be spent on refurbishing the property. He said (and this is in

issue and I shall return to the point) that the major part of the refurbishment was renewal of the obsolete heating and ventilation plant.

49. It appears from a letter dated 23rd November 1998 to Maunder Taylor from the London Borough of Barnet that the latter expressed interest in taking a lease on the property. In the letter it was said that the overhauling of the heating system by the landlord was integral to the Council's decision on whether or not to take a lease on the building. Mr Faust was unaware of the existence of that interest on the part of the London Borough of Barnet until disclosure of documents in this action; nor was he aware of the response of Maunder Taylor or of any further communication from the London Borough of Barnet. Mr Faust said in evidence:

We were not told of this strong expression of interest. On enquiry of Maunder Taylor we received no further explanation. We don't know whether the London Borough of Barnet followed up their letter ... on 23rd or 24th November it was Maunder Taylor's clear duty to apprise me, their client, of this interest and their reaction to it. They did not do so. I have seen no document that shows that Maunder Taylor did respond to the London Borough of Barnet.

50. No witness representing the London Borough of Barnet or representing Maunder Taylor gave evidence before me. The letter says that Maunder Taylor had stated that the landlord was intending to overhaul the heating system. But I accept Mr Faust's evidence that Ultraworth did not intend to do that because, as he said, the company did not have the money to spend large sums on what he described as "refurbishing the building by putting it back into an acceptable condition".

51. An offer of £1m for the freehold from Opecprime Properties Limited was accepted on or about the 25th November 1998. Contracts were exchanged on 23rd December 1998 between Balcroft, a company related to Opecprime Properties Ltd., and the claimant. On 18th December Maunder Taylor wrote to (inter alios) Mr Faust describing the offer of £1m for the freehold of the whole building as the only serious offer which they had received. In the letter, Maunder Taylor stated that they had continued to market the property following the date of the offer and had shown some further prospective interested parties over the property but no further offers had been received. Mr Faust gave evidence that no one made an offer even on the basis that the building would be put into repair.

52. In that state of the evidence, I am not satisfied that the accountants or the recording studio would have offered £7 per sq. ft., or a premium of £200,000 per floor, or made any offer at all even if the premises had

been in repair. Nor am I satisfied that the London Borough of Barnet would have made an offer for a lease of the premises or any part of the premises, even if the premises had been in repair.

### **DIMINUTION IN VALUE: Valuation**

53. The freehold interest in the building, assumed to be in repair in accordance with the covenants, can be valued on various bases:

(1) That it is bought by an investor for the purpose of letting, unrefurbished, on multiple tenancies; this method also values the reversion on the basis that the claimant retains the freehold and lets the property on multiple tenancies;

(2) That it is bought by a refurbisher who will spend money on refurbishing the building and then rent it out;

(3) That it is bought by an owner occupier for use as offices;

(4) That it is bought by a developer, as actually happened.

### **Basis (1)**

54. Mr Michael Gilmartin, FRICS, who gave expert valuation evidence on behalf of the claimants, said in evidence that the only way that the building would be likely to be attractive to the market would be by way of multi-letting. Mr Gilmartin considered that if the property had been in repair a landlord would have been able to let the building at £7.21 per sq. ft. That was the market rent, he said, for such a building in repair, as evidenced by the new lease to Buhler, which provided for annual rental at that rate. He said that the way that the property was marketed, (sc in its existing state) was most offputting to prospective tenants. Recarpeting and re-decoration of the common parts and of one of the floors would have been helpful. He mentioned for the first time in his cross-examination that his firm had acted for a prospective purchaser, Ebsco Limited, who had "turned down" Enterprise House specifically on the ground of its condition. Ebsco Limited also turned down another comparable property, Gan House at 17 Station Road, New Barnet, on the same ground, and took the fourth floor of Kingmaker House at a rent of £10 per sq.ft. Gan House was put forward as a comparable by Mr Simon Crust, FRICS, who gave expert valuation evidence on behalf of the defendant. He described it as a "basic 1950s office building" and said that there was no interest in the building from office occupiers. The only interest came from a hotel operator and a residential developer. I do not regard Mr Gilmartin's evidence about Ebsco Limited as establishing more than that Ebsco Limited were willing to pay £10 per sq.ft. for refurbished premises and were not willing to pay £7 per sq.ft for unrefurbished premises that were out of repair.

55. Mr Crust considered that there was no market for office accommodation in the area having a dated unrefurbished specification. Consequently, no investor would consider purchasing Enterprise House to let as office accommodation regardless of whether the repairs contemplated by the lease had been, or were to be, carried out.

56. Mr Gilmartin was the only expert witness to carry out a valuation on basis (1). He based his calculation on the proposition that the landlord would have been able to let the building in multiple occupation at a rent of £7.21 per sq.ft, the figure agreed by Buhler. He took a yield of 10 per cent as in his view suitably reflecting a mixed covenant strength and expected management costs. Allowing £158,000 for deductions, he valued the reversion at £1.7m. The deductions included allowances totalling £130,000 which took into account the average time estimated to be taken to let the premises and possible initial rent free periods. Those allowances were based on a period of 9 months. Mr Raymond Arrowsmith FRICS, FSVA, who gave expert valuation evidence on behalf of the part 20 defendant, carried out similar calculations, but on the basis that the property was in disrepair. The logic, which I accept, of Mr Arrowsmith's calculations was the same as that of Mr Gilmartin's calculation save that costs of repair have to be added to the deductions. It also has to be borne in mind that if repairs are to be carried out, the time-dependent allowances may have to be increased. Nevertheless, Mr Arrowsmith's time allowances were based on a period of only three months. On the basis of those calculations the diminution in the value of the premises caused by the state of disrepair is equal to the cost of repair, which I have found to be £149,665 as an upper limit, plus a possible addition to make an allowance for the time taken to effect the repairs. Mr Crust thought that Mr Gilmartin's period of nine months should (regardless of repairs) be increased, though he said he had not addressed the issue in detail because he considered that basis (1) was not a realistic scenario. If, nevertheless, I make what seems to be a generous allowance of a further three months, Mr Gilmartin's deductions would increase by £44,000 on that account. Thus, the diminution in value of the reversion on basis (1) would be the cost of repair plus £44,000, say £195,000. On the basis of Mr Gilmartin's figures of rental and yield, the value of the premises in their actual state of disrepair would be £1.7m less £195,000, say £1.5m. Mr Arrowsmith thought that a yield in the region of 12 per cent. was more appropriate. If so, the figures would become £1.4m and £1.2m respectively.

57. In spite of the marketing efforts, no offer of £1.2m was forthcoming after Artesian Challenger Plc withdrew their offer on finding that they would probably be unable to obtain planning permission to convert the building to residential use. I conclude that Mr Gilmartin's valuation, even adjusted downwards as I have indicated, was unrealistic. Not only was the figure of £1.2m unrealistic; no offer at all was made by an investor

intending to let the building as an office building. I accordingly accept Mr Crust's view that purchase by an investor to let the property as offices was not a realistic scenario. It is unnecessary for me to decide why that is so. Mr Crust gave evidence that although £7.21 per sq.ft. had been agreed between Ultraworth and Buhler as the market rent for the property in good repair on the basis of a willing landlord and a willing tenant, it must be regarded as an upper limit in practice since that basis may not have existed in that there was no market.

58. If no investor was willing to invest for the purpose of letting the building on multiple tenancies, even at a price allowing for the cost of repairs, that suggests a dearth of such tenants in the market. In those circumstances, the freehold of the property, whether in repair or not, cannot be valued on the assumption that such tenants were available. Mr Crust accepted that it was not beyond the realms of possibility that a tenant might have been found who would have taken one or two floors, but in my judgment that is scarcely a market. Moreover, a valuation of the premises in repair, on the basis of letting only two floors, would amount to only about £900,000 on Mr Gilmartin's figures.

59. Mr Cowen relied on evidence of Mr Tubbs (which I accept) that he had received enquiries about the office premises to be built on the new ground floor of Enterprise House. But there was undoubtedly a market for modern or refurbished office premises. Mr Cowen argued that it followed that there must have been a market for the existing premises in a repaired state. I reject that argument. The conclusion does not follow from the premise.

60. I conclude that basis (1) is not a realistic basis on which to make any finding that the state of disrepair of the premises caused any diminution in the value of the reversion.

### **Basis (2): Refurbisher**

61. As to basis (2), all the experts adopted a rent of £10 per sq.ft. for a refurbished property. I accept that that is a realistic figure. Mr Gilmartin produced in his expert's report a valuation, again based on a yield of 10 per cent., at £1.7m. That valuation took no account of refurbisher's profits. He abandoned it as a valuation in the course of his oral evidence. Mr Arrowsmith adjusted Mr Gilmartin's figures to allow for refurbisher's profits at 20 per cent. of cost (including the purchase price of the building) and to allow for the payment of £12,000 by way of interest. That reduced the valuation to £1,215,000, and produced a profit of £433,000. Mr Gilmartin considered that the refurbisher's profit would probably not be 20 per cent; it could be 10 per cent. He thought that £433,000 was a huge profit on such a transaction. If one assumes a profit of 10 per cent., the value increases to £1.4m, and the profit falls to £236,000. Mr Arrowsmith produced a further adjustment to Mr Gilmartin's valuation,

using his preferred yield of 12 per cent. With profit at 20 per cent. of costs, that valuation amounts to £866,000, including a profit of £361,000. Again, if one takes profit as 10% of costs, the valuation becomes £1,025,000, involving a profit of £197,000. Mr Crust produced a valuation on the basis of a yield of 9.75 per cent., total costs of £2.1m and profit of £419,000 at 20 per cent. of costs. Those costs included the costs of a new heating system; Mr Crust relied on advice he had taken that the repairs contemplated by the lease would not include the replacement of the Versatemp units with a modern system. Thus it is apparent that the non-repair of the Versatemp system was irrelevant to his valuation. Indeed, Mr Crust considered that only £40,775 worth of repairs to the building would not be negated by refurbishment and therefore result in a cost saving to a refurbisher. He assessed the value of the property to a refurbisher at £720,000 in its actual condition. He said that his view was supported by the fact that the claimant had paid £1,060,000 for Enterprise House in 1996. Allowing for the rental income on a cash flow basis, that price implied a vacant possession value of about £650,000, or £730,000 adjusted to values prevailing in July 1998 using the relevant Investment Property Databank index. He considered that a refurbisher, might, in theory, be prepared to pay £40,000 more for the property in repair than for the property in its actual condition. But that figure was so small compared with a total cost of refurbishment of over £1m that it would be ignored by the purchaser. Be that as it may, if Mr Crust is right it is clear that the claimants have suffered no damage by reason of a diminution in the value of the property to a refurbisher, since they have obtained not £760,000 but £1m for the property.

62. Mr Crust's figure for costs of £2.1m included over £1m for the refurbishment works, based on a list of items which he considered would have been required by way of refurbishment to ensure that the accommodation was of the standard required by the current market. The four principal items were (1) general upgrading of the lighting, including category 2 fittings throughout; (2) full suspended ceilings; (3) fully updated and upgraded underfloor and perimeter trunking; and (4) new heating system. Mr Crust's costs figure of £2.1m is to be compared with Mr Gilmartin's £2.6m if site purchase be included. Excluding site purchase, the corresponding cost figures of Mr Crust and Mr Gilmartin are respectively £1.4m and £897,000. The latter figure increases to £909,000 if allowance is made for interest, as suggested by Mr Arrowsmith.

63. Mr Gilmartin's costs of the refurbishment works were £600,000. He said this in his report:

On the assumption that the fabric and the envelope of the building had been left in repair by the outgoing tenant and that the common services had been repaired or renewed as necessary the Landlord's refurbishment scheme would have involved individual fitouts of each of the floors and

the redecoration and upgrading of the common parts and toilet facilities. This could have been achieved within a budget of around £600,000 ...

Thus he was not including the major items in Mr Crust's list. Mr Gilmartin did not accept that suspended ceilings would be necessary to attract an annual rental of £10 per sq.ft. Nevertheless, he accepted that the absence of suspended ceilings and perhaps the perimeter trunking at Enterprise House probably accounted for the 30 per cent difference in rent. He was referring to the figure of approximately £7 per sq.ft taken as the annual rent for Enterprise House unrefurbished and the £10 per sq.ft for Kingmaker House, an agreed comparable property. Kingmaker House was situated in Station Road, New Barnet. It was constructed in 1966 and had since been refurbished; according to Mr Gilmartin, that occurred about 20 years ago. However, undated particulars produced by Mr Arrowsmith as particulars of transactions taking place in 1997 or 1999 described the premises as "newly refurbished". The refurbishment provided suspended ceilings, category 2 lighting, central heating and three-compartment trunking. The experts were in agreement that the annual rentals applicable there in recent transactions could be used as a comparable figure for July 1998.

64. As to what was necessary by way of refurbishment to attract the annual rental of £10 per sq.ft., I prefer the evidence of Mr Crust to that of Mr Gilmartin; and I regard Mr Gilmartin's assumption that the premises had been left in repair, as a basis for his valuation (which in any event he abandoned) as scarcely, if at all, significant. I conclude that the value of the property to a refurbisher was not as great as £1.215m but on the contrary was closer to Mr Crust's figures of £720,000 or £760,000.

65. The valuations to which I have been referring in relation to basis (2) are commonly called residual valuations. Mr Crust entered a caveat about residual valuations. He said that such valuations must be treated with some caution owing to the number of variables inherent in the calculation. I accept that evidence.

66. I thus find that the value of the reversion calculated on basis (2) was not diminished, by reason of the lack of repairs, by more than £40,000. But in any case I am not satisfied that the value of the property calculated on that basis would, even in the absence of disrepair, have exceeded the price actually achieved.

### **Basis (3): Owner-occupier**

67. As to basis (3), purchase by an owner-occupier, Mr Crust was aware of only one comparable transaction, the purchase of a building called Castle House in December 1998 at a price equating to £46 per sq.ft freehold. That would amount to some £1.2m for a building with the floor area of Enterprise House. Mr Crust compared Castle House favourably

with Enterprise House: it was a more modern building (I would add by only a few years), it had a more attractive exterior and an internal specification (including a suspended ceiling) which was much closer than that of Enterprise House to the present requirements of office occupiers. In those circumstances, Mr Crust considered that Enterprise House in repair would have commanded considerably less than £46 per sq.ft. Mr Crust pointed to the lack of demand. He said that in July 1998 there were four buildings of very similar size available which an owner occupier could have purchased: Enterprise House, Castle House, Gan House and Warwick House. Only one of those, Castle House, sold to an owner-occupier. Enterprise and Warwick Houses were sold to developers. Gan House remained on the market and the only interest that, he understood from the letting agents, had been received was from two parties who wished to convert Gan House to flats (in one case) and a hotel (in the other case). He did not consider that the level of demand from potential owner-occupiers was sufficient to have resulted in a higher figure than the £1m eventually paid by Balcraft, even if the property had been in repair. Moreover, the lease to Buhler might have been a significant deterrent to any such potential purchaser.

68. I accept Mr Crust's evidence on this point, and conclude that no diminution in the value of the reversion to an owner-occupier has been shown.

#### **Basis (4): a Developer**

69. Mr Crust considered that the price achieved on the sale of Enterprise House in December 1998 was the best evidence of the true value of the freehold at the end of the term, since the market during the intervening period had been "reasonably static". He also pointed to a sale of a comparable but slightly more modern property, Warwick House, in January 1999 to the same purchaser for £43 per sq.ft.

70. Mr Nicholas Tubbs gave evidence before me. He was employed by the Comer Group of Companies, the parent company of the purchaser, Balcraft. The price was negotiated by Mr Luke Comer, one of the directors of the Comer Group, but Mr Tubbs dealt with Maunder Taylor from autumn 1998 and was involved in negotiations with the local planning authority to obtain planning permission to convert the property into residential flats. He said that the policy of the local planning authority was to keep office premises in order to provide local employment. He was confident of obtaining planning permission, at any rate on appeal. The present position was that the local planning authority had passed a resolution to grant planning permission to convert the upper floors into thirty-eight 2-bedroomed flats, to include the erection of a new top floor, and the ground floor into eight self-contained office suites; he wanted conversion of the whole to residential use.

71. Mr Tubbs had been aware that Enterprise House had been on the market for some time and was generating very little interest. In his view (he was not called as an expert) the reason was that Enterprise House was redundant as an office block because of its dated specification, and it therefore had little or no value to the commercial market. Mr Tubbs said, and I accept, the following:

Enterprise House was an attractive proposition for Balcraft. From the outset, it was our intention to convert Enterprise House into residential flats. The basic fabric of Enterprise House was sound and the inside structure and condition of the building was immaterial to our intention to convert it for residential use. We were buying Enterprise House for the shell only...I can confirm that the existing internal services at Enterprise House including the central heating, air conditioning and plumbing services will be replaced as part of the conversion work. The design capacity and specification of the existing internal services are simply not appropriate for the proposed modern residential block of flats.

Mr Crust said:

A purchaser intending to redevelop or convert Enterprise House to an alternative use would at the very least strip out the interior and services of the building, renew the windows and most likely the roof covering. Whilst, in theory, there may be a few minor items of repairs contemplated by the headlease which would not be superseded, these items would be so insignificant as to be wholly disregarded by potential developer purchasers.

72. Mr Tubbs said that the building was so absurdly cheap that it made no difference whether Comer paid £1m, £1.250m or £1.500m for it. Mr Comer simply negotiated the lowest price that he could. That evidence bears out the evidence of Mr Crust that "no one would pay more than a developer for this property" and Mr Crust's evidence quoted immediately above. I find that the value of the reversion at the end of the term was £1m, and that it had not been affected by the state of disrepair of the premises.

## **CONCLUSION**

73. I conclude that the claimant has suffered no loss by way of diminution in the value of the reversion to Enterprise House arising out of its state of disrepair. I have not overlooked the possible effect on the value of the reversion of the tenancy of Buhler. Mr Cowen accepted that the diminution in value of the reversion could be reduced by the existence of Buhler's covenant to repair, Buhler having the right, which it exercised, at the end of the lease to a new lease under the provisions of the Landlord

and Tenant Act 1954. In the event, I have not found it necessary to evaluate the effect of that covenant, since it does not affect the result of the action. In particular, on the evidence of Mr Tubbs I am satisfied that the existence of the tenancy to Buhler did not make any difference to the price that Balcraft was prepared to pay for Enterprise House.

74. Since the defendant has no liability to the claimant, Buhler has no liability to the defendant. In that circumstance, it is unnecessary for me to deal further with the helpful arguments presented to me by Mr Bickford Smith, counsel for the part 20 defendant. There will be judgment for the defendant on the claim, and judgment for Buhler in the part 20 proceedings

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