IN THE HIGH COURT OF JUSTICE Case No: PT-2025-LDS-000038
Neutral Citation Number: [2025] EWHC 1077 (Ch)

BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY, TRUSTS AND PROBATE LIST (Ch D)

Business and Property Court in Leeds
4th Floor
Westgate
6 Grace Street
Leeds LS1 2RP
Date: 25 April 2025

Before :

UPPER TRIBUNAL JUDGE MARK WEST
SITTING AS A JUDGE OF THE HIGH COURT

IN THE MATTER of the Bridlington Charities

AND IN THE MATTER of the proposed sale of Charity Farm Caravan Park, 17 Main Street, Bridlington, East Yorkshire YO15 1EH

Between :

(1) MRS SUSAN HOGGARTH

(2) MR MILES PICKERING

(3) MRS HARLEY SIMPKIN

(4) MR JAMIE SELLARS

(5) MISS KELLY BREDDY
(under s. 115(1)(d) of the Charities Act 2011, being inhabitants of Bridlington)

(6) MR STEVEN LOUNT
(under s. 115(1)(c) of the Charities Act 2011, being a person interested in the Charity, as well as under 115(1)(d), being an inhabitant of Bridlington)

Claimants

- and -

(1) **REV NEIL BOWLER**
(2) **REV MARK CAREY**
(3) **MR DAVID ANTHONY RIDSDALE WATSON**
(4) **YVONNE KURVITS**
(5) **MRS HELEN HUGHES**
(6) **MRS JUDY BRAMELD**
(7) **MRS GILL EILEEN ANDREWS**
(8) **REV STEPHEN DYE**
(9) **MR ANTHONY HALFORD**
(10) **MS PAULINE MAY HART**
(11) **MRS PENELOPE ANNE CLARK**
(Sued as the Trustees of the Bridlington Charities)

Defendants

(12) HIS MAJESTY'S ATTORNEY GENERAL

Proposed Defendant

David Mitchell (instructed by **NBB Law Limited)** for the **Claimants**

Joshua Winfield (instructed by **Lupton Fawcett LPP)** for the **First to Eleventh Defendants**

Hearing date: 25 April 2025

Remote hand-down: This judgment was handed down remotely at 4pm on 2 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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JUDGMENT

Introduction

1. The First to Sixth Claimants ("the Claimants") bring this claim under s. 115(1)(d) of the Charities Act 2011 ("the 2011 Act") on the basis that they are inhabitants of Bridlington and therefore inhabitants of the area of the charity. I shall refer to them individually as C1 to C6. C6 also claims under s. 115(1)(c) of the 2011 Act as being a person interested in the charity, as well as under s.115(1)(d) as being an inhabitant of Bridlington.

2. The First to Eleventh Defendants ("the Defendants") are the trustees of the Bridlington Charities ("the Charity"), a group of linked charitable trusts registered under the name "Henry Cowton" with charity number 224609. The Charity is a small charity with an income of just over £88,000 in the last reported year to 31 December 2023. The Defendants own the freehold of the property known as Charity Farm, 17 Main Street, Sewerby, Bridlington, East Yorkshire YO15 1EH ("the Land"), which is registered in the name of the Official Custodian for Charities with title no. YEA52332, as an investment property, to generate income to apply in furtherance of the Charities' objects. These are set out in paragraphs 23–27 of Part II of the Schedule to a Scheme of the Charity Commissioners dated 4 February 1870.

3. Part II of the Scheme provides that the net income of the Charity shall be applied in one of four modes:-

(a) in Alms – "Such amount may be applied to the benefit of the most deserving and necessitous inhabitants of the parish of Bridlington"

(b) in support of Hospitals

(c) in Education and

(d) in Exhibitions for meritorious Scholars.

4. C6 is a director of, and a person with significant control of, a company known as H. Lount & Son Ltd, company no. 04520977 ("the Company"), which is the tenant of the Land under a commercial lease of 2 October 2013 which expires on 30 September 2034. It is a protected as a business tenancy under Part II of the Landlord and Tenant Act 1954. It also contains residential accommodation, which is occupied by members of the Lount family.

5. Four generation of the Lount family have operated a caravan park from the Land for more than 100 years. The Company currently operates the caravan park on the Land.

6. C2 to C5 are relatives by blood of C6 and his estranged wife, or their partners, and C1 is their friend. There is an issue as to whether C2, C5 and C6 are inhabitants of Bridlington and therefore inhabitants of the area of the charity. It is not disputed that C1, C3 and C4 are inhabitants of Bridlington and therefore inhabitants of the area of the Charity. There is a separate issue as to whether C6 is interested in the Charity within the meaning of the 2011 Act.

7. The purpose of the present claim and the application is to prevent the Defendants from concluding the sale of the freehold of the Land, pursuant to an exclusivity agreement into which they have entered with a prospective purchaser, following a bidding process. The Company wishes to but the land, but was unsuccessful in the bidding process.

8. The claim form indicates that the Claimants are claiming that the prospective sale of the Land would be a breach of trust or duty by the Defendants and implies that the Claimants are acting purely in the interests of the Charity and its objects in seeking to restrain the sale.

9. The Defendants' position is that:

(a) the motivation of the Claimants in bringing the claim and seeking the interim injunction is to frustrate the proposed sale and ultimately compel them to sell the Land to the Company or C6 or other persons connected with him

(b) they have brought charity proceedings in the interests of the Company, or C6, or both, because otherwise the Company or C6 would have no legal basis to interfere with the prospective sale

(c) as a result the claim is not brought in good faith and is abusive.

10. The Claimants seek an order that (1) the Defendants, as trustees of the Bridlington Charity, be restrained until the conclusion of the trial of the action or until further order from taking any further steps to progress any sale of the Land (2) the claim be stayed until the conclusion of their application to the Charity Commission for permission to continue the claim.

11. The Defendants seek an order that the claim by struck out and the application dismissed.

12. It is common ground that these are charity proceedings within the meaning of s.115(8) of the 2011 Act.

13. The 2011 Act therefore provides that

> "(2) Subject to the following provisions of this section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.
>
> ...
>
> (5) Where subsections (1) to (4) require the taking of charity proceedings to be authorised by an order of the Commission, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division".

14. The Charity Commission was sent a copy of the proceedings at the time of their issue, but a formal application for permission to proceed with them was not made at that time. It was the Claimant's intention to seek such permission once the terms of this judgment were known. The formal application should have been made expeditiously at the time of the issue of the proceedings, although it is a moot point whether the Commission would have been able to consider the proceedings properly before the hearing of this application and I shall ay no more about that aspect of the matter. The Claimants accept, however, that if the claim survives, on any footing the claim must be stayed until the conclusion of their application to the Charity Commission for permission to continue it.

15. The proceedings had been served in draft on the Attorney-General, albeit not with a sealed copy by way of formal service, but as at the date of the hearing he had not replied to them or acknowledged service of them.

16. Relations between the Lount family and the Defendants have been poor for at least 15 years and there have been (at least) two sets of Court proceedings. The proceedings in the Leeds County Court (which were issued as long ago as August 2022 under claim no. 500Y0322, although Mr Mitchell's skeleton argument refers to a claim number K80L054) now, following various amendments and developments, contain a number of different issues (as set out in an agreed List of Issues, which now runs to 11 pages):-

(a) access/history of conflict, which concerns the Defendants' insistence that their agent, Mr Andrew Mead, attend the premises, despite the Company arguing that it had numerous concerns as to his historic conduct

(b) works carried out to the Land, which are alleged to be breaches of the listed building regime. There are issues as to when the works were carried out, the Defendants' knowledge of them, their role in bringing them to the attention of the local authority, East Riding of Yorkshire Council ("EYRC") and who is liable to carry out the works required by the local authority to remedy the listed building issues

(c) counterclaims, in particular as to insurance issues.

17. The proceedings have not in fact progressed very far, as it is clear that disclosure is not complete, such that the next stage (if the litigation continues) will be the giving of further disclosure by the Defendants. Thereafter there will need to be witness statements and expert evidence prior to a trial (which on the present List of Issues would take at least 1 week). There was an FDR on 3 April 2025 which was unsuccessful. Each side has spent approximately £150,000 to date in costs.

18. I heard the application on the afternoon of 25 April 2025 when the Claimants were represented by Mr David Mitchell and the Defendants by Mr Joshua Winfield, both of

counsel. I am indebted to both of them for their able written and oral submissions. I had a witness statement from C6 on behalf of the Claimants and two witness statements from Mr Mead, the secretary/treasurer of the Charity, who has the day to day management of the Charity on behalf of the Defendants. I reserved my judgment. On behalf of the Defendants, Mr Winfield gave an undertaking until the handing down of the judgment on the present application to refrain from taking any further steps to progress any sale of the Land.

The Proposed Sale of the Land

19. It was the evidence of Mr Mead, which the Claimants were not in a position to controvert, that following a rent review under the lease, the rent up to October 2024 was £67,000. The review took place in that month and resulted in a modest increase in the rent to £71,500. Following a review of the Charity's agricultural interests, the Defendant considered that it would be in the Charity's long-term interests for its farming assets to be sold so that a sum of money could be invested in the CCLA (the Church of England's financial investment vehicle). The Charity had other three parcels of agricultural land together with the Land on which the caravan park stood. The Defendants received a presentation from the CCLA in December 2024 and concluded that, rather than managing three parcels of agricultural land and the caravan park, where they were at loggerheads with the tenant, it would in the Charity's long-term interests if they realised all of those assets and invested the proceeds of sale. At the presentation interest rates of between 4% and 5% were quoted and an illustration given showing that, as opposed to receiving £71,500 in rent from the caravan park and £10,100 from the letting of agricultural land, the annual income if invested could be as much as £135,000. As a result the Defendants concluded that they should sell off all of the agricultural assets, including the freehold of the Land subject to its lease.

20. Advice was sought from Mr William Reynolds of Sanderson Weatherall, who was MRICS qualified and a designated person for the purpose of the 2011 Act. He has over 20 years' experience as a chartered surveyor working at a national firm of the sale and purchase of caravan parks. His confidential advice was given in a report dated 23 January 2024. It is the Defendants' case that that advice complied with s.119 of the 2011 Act and Regulation 4 of the Charities (Dispositions of Land: Designated Advisers and Reports) Regulations 2023 ("the 2023 Regulations"). Mr Mitchell for the Claimants

challenged that contention, although his target was rather the situation in March of this year, to which I shall turn below, rather than the situation in January and I see no reason to doubt that the January report was statutorily compliant.

21. Accordingly, on 5 December 2024 the Defendants' solicitors, Lupton Fawcett LLP, wrote to the Company's solicitors, NBB Law Limited, and stated

> "Following a recent rent review the Trustees have met and that in the light of the modest increase in rent that they have decided to sell the freehold of Charity Farm. The Trustees will be selling the property subject to your client's existing lease.
>
> The Property will be placed on the open market early in the New Year …
>
> The Trustees still intend to proceed with the court proceedings and action in respect of the breach of planning and Listed building consent that is subject of enforcement action to their conclusion."

22. On 9 December 2024 Mr Mead wrote to the Company advising it that the Defendants were intending to instruct agents to sell the freehold of the Land in January 2025. Once the process of appointing the agents had been finalised, the Company would be provided with their details and sales particulars and the process by which interested parties, which might include the Company if interested, would be able to submit offers for the property. No immediate reply to that letter was received.

23. However, on 16 January 2025 Mr Reynolds was approached by Mr John Anderson, an agent appointed by the Company, to the effect that:

> "I understand your clients have decided to place their freehold interest in Charity Farm on the market for sale. Three points arise for me from this decision, as follows
>
> 1. [About erecting a For Sale board]
>
> 2. My clients are interested in acquiring the freehold interest. Please confirm you will include them within any marketing campaign.
>
> 3. In the circumstances my clients would like an opportunity to

> discuss a potential purchase with you before the freehold interest is openly marketed."

24. Mr Reynolds replied promptly to Mr Anderson on 22 January 2025 that the Trustees were required to ensure that any disposition was made on the best terms reasonably obtainable. As he had identified that the Company had an interest in purchasing the property, the Company would be provided with the marketing material in due course. The Defendants might discuss a potential sale with the Company, but not until the agent's instructions were formalised. Any disposition had to be made on the best terms reasonably obtainable and it was anticipated that that would require an open marketing campaign to be undertaken.

25. On 30 January 2025 formal instructions were given to Mr Reynolds for the marketing campaign to begin. On 26 February 2025 viewings were conducted by the agents. The date was chosen because the caravan park was not yet open for the season and it would provide minimum disruption for the park business. The prospective purchasers were accompanied by C6's wife, although I do not need to make findings about what she may (or may not) have said (or why) on that occasion.

26. In an email of 4 March 2025 Mr Reynolds provided for offers for the purchase of the Land subject to the lease, with a closing date for offers of 12 noon on Tuesday 18 March 2025. The email stipulated that

> "...
>
> 3. Your offer. This should be a fixed sum payable to acquire the freehold interest in the subject property subject to the lease to [the Company]. Please also state the amount of your offer in words. NB <u>Any offers made that are calculable only by reference to another offer will not be considered.</u>
>
> ...
>
> 5. Please include details and evidence of the source and availability of funding for the purchase. If your offer is subject to bank funding please provide correspondence detailing support to fund your offer.
>
> ...

> 7. If un-resolved at completion, please confirm whether you envisage taking an assignment of the legal action that is noted within the briefing note.
>
> 8. The Trustees would wish to enter into an exclusivity agreement providing the successful purchaser with the exclusive right to purchase the property for a period of 16 weeks from acceptance of any offer for a consideration of £50,000 (fifty thousand pounds). This sum would be deducted from the purchase price on completion or retained by the Trustees in the event that the purchaser does not complete the purchase. A draft of the proposed exclusivity agreement is attached. Please confirm that you would be prepared to enter into an exclusivity agreement on this basis."

27. Attached to the email were a draft exclusivity agreement which provided for a deposit of £50,000, as well as providing for a 16-week exclusivity period, and a briefing note on the litigation dated February 2025 which stated the Defendants' position as being

> "6.… Presently, the matter is set for an early evaluation hearing in April 2025 ahead of a final Court hearing.
>
> 7. If the matter is un-resolved at the date of sale, a prospective purchaser will be offered the opportunity to take an assignment of the ongoing legal action or alternatively, the action by the present Landlord will fall away at the point a new freeholder completes a purchase of the property".

28. On 5 March 2025 NBB wrote to Lupton Fawcett and made an offer, without prejudice and subject to contract, in the following terms:

> "1. We write to propose a settlement of the on-going litigation, which implicitly includes a scheme which once implemented would result in a full and final separation of our clients' respective interests.
>
> 2. You will understand why it is important to our client to secure the freehold of the Premises (which your client recently leases to them, such lease being the subject of this litigation) and therefore make what we regard as a generous offer to achieve this. Should the offer not be acceptable (or an agreed variation of it, and we make clear that our client is prepared to discuss the terms of it to find a satisfactory resolution) under which our client does purchase the Premises, it will vigorously defend the claim

and prosecute the Counterclaim until it is resolved, and such will (of course) mean that your clients will continue to be involved in expensive and time-onerous litigation (which would include each of the Claimants giving evidence at a trial) for potentially years to come.

3. Our client will purchase the freehold of the Premises for (at your clients' choice or election):-

(a) £1.75M; or

(b) £10,000 more than the highest offer received (and we note that Mr Reynolds of the agents, Sanderson Weatherall, emailed interested buyers on 4th March 2025, providing that 'Offers are requested in writing to this office no later than 12 Noon on Tuesday 18th March 2025'); or

(c) If the Premises are immediately withdrawn from the market, in advance of a closing date for offers, upon acceptance of this offer, such sum as shall be determined by an expert valuation provided by a Jointly Instructed RICS valuer plus £10,000, and such (if you require) to be prepared on the hypothetical or deemed basis that the Premises are in the condition your clients assert in the proceedings they should be in, in other words the works you have pleaded as being necessary in the draft Re-amended Particulars of Claim have been carried out.

4. We do not know what sum will be required to fund the purchase, but our clients do have access to significant funds which would allow them to quickly complete any purchase. They will within the latter of 7 days from acceptance of this offer or the setting of the price, provide you with proof of funds.

5. Further and in addition, our client will settle the litigation (itself) on the following terms. Your clients' claim has two elements, the first concerns your clients' rights of access, which following a sale will not arise, so no substantive relief is necessary (and we deal with costs below).

6. The second element concerns the works done to the Premises. Your clients have no interest in the condition of the Premises once they have sold the Premises, and (again save for the issue of enforcement) we are of the view that the works alleged to have been improperly carried out by our client as set out in the draft Re-amended Particulars of Claim have not devalued the Premises (especially given that one of the requests is to remove the porch). Please let us know if you disagree. Once the Premises have been sold, then the position is that as your clients did not carry out the works and is no longer an owner (so has no ability to conduct works) there is no realistic prospect of

> it being liable for any enforcement action. Such can be confirmed with EYRC as part of a sale. In addition to this, if such confirmation cannot be obtained, our client would be prepared to provide an undertaking to resolve the matters to EYRC satisfaction within a reasonable time, to indemnify your client as to any further costs or actions and to buttress such undertaking with the sum of £50,000 being held on a joint authority (which exceeds the estimate provided at paragraph 32 of your clients' Re-amended Particulars of Claim).
>
> 7. Our client will also discontinue its Counterclaim.
>
> 8. As to Costs, then Mr Reynolds' email of 4th March 2025 also contained a document entitled 'Briefing Note' which provided limited and incomplete details about this litigation and stated in the final paragraph the following; 'If the matter is un-resolved at the date of sale, a prospective purchaser will be offered the opportunity to take an assignment of the ongoing legal action or alternatively, the action by the present Landlord will fall away at the point a new freeholder completes a purchase of the property'. It follows that your clients, under the alternative situation (which would be far the most likely to arise, albeit that your client would also need to deal with the Counterclaim), have expressly stated that they would discontinue their claim. Such would expose them to paying our client's costs and not recovering their costs. Despite this, our client is prepared to make a contribution (which we estimate will exceed one-third of your clients' reasonable recoverable costs) in the sum of £25,000 towards your clients' costs.
>
> 9. This Offer is open for acceptance for 21 days (i.e. until 4pm on 27th March 2025).
>
> 10. Such provisions will be in full and final settlement of all and any claims between your clients and our client (as well as the Directors personally)."

29. It is apparent from this that the letter did not comply with the Defendants' requirement that the bidder should include details and evidence of the source and availability of funding for the purchase and that, if the offer was subject to bank funding, correspondence should be provided detailing support to fund the offer. The second alternative offer also did not comply with the stipulation that any offers made which were calculable only by reference to another offer would not be considered. There is nothing in the letter to suggest that parts of the offer were severable from one another.

30. On 11 March 2025 Lupton Fawcett rejected the offer, the material parts of their letter being that:

> "4. Your offer letter is not an offer letter which will offer your client any costs protection. The proposed sale of the property, whilst potentially impacting on the terms of the litigation in terms of the potential claimant, is not a pleaded matter within the litigation which the Court has any jurisdiction to deal with.
>
> 5. Your client was given full details of the sale process by Sanderson Weatherall including the closing date for submissions of offers. She even insisted on attending the viewings ... Your client's offer is not made in accordance with the agent's briefing note, which made it clear that offers over £2,000,000 were to be submitted.
>
> 6. Mrs Lount of your client company was told at the viewings conducted by Mr William Reynolds that escalating bids were not acceptable.
>
> 7. If your client wishes to bid for the property then it should do so on an open basis (and not on a without prejudice basis) to the Trustees' agent, Sanderson Weatherall, in accordance with the agent's notification to all prospective purchasers.
>
> ...
>
> 9. As a consequence, the terms of your client's offer are not acceptable."

31. Although the original briefing note did not in fact stipulate that offers over £2,000,000 were to be submitted, it is apparent that, with effect from 11 March 2025, such a stipulation had been made by the Defendants.

32. On 17 March 2025 Mr Anderson responded to Mr Reynolds in the following terms

> "I refer to your email dated 4th March 2025.
>
> I am instructed by H Lount and Son Ltd to submit to you an offer for the freehold interest in Charity Farm. The information related to this offer which you requested in your email is as follows, using the numbering in your email.
>
> 1. The purchase will be made in the name of H Lount and Son Ltd. The principal point of contact will be Mrs M Lount ...

> 2. The lawyer who will act in the purchase is ... of NBB Law Ltd ...
>
> 3. My clients' offer to acquire the freehold interest in the subject property subject to the lease to H. Lount & Son Ltd is £2,000,000 (two million pounds).
>
> 4. My clients' offer is subject to a valuation survey and contract only.
>
> 5. Proof of funds will be provided within 7 working days of acceptance of the offer.
>
> 6. My clients consider they should be in a position to exchange contracts within 4 to 6 weeks and to complete within 2 weeks after exchange.
>
> 7. If un-resolved at completion my clients will not be prepared to take an assignment of the legal action that is noted within the briefing note.
>
> 8. My clients confirm that they would be prepared to enter into an exclusivity agreement on the basis set out in your email dated 4th March 2025."

33. On 26 March 2025 the Defendants met with Mr Reynolds. He explained the results of the bid process. The Defendants decided to accept the highest bid, which was not that of the tenant Company. It was Mr Mitchell's contention that any advice tendered by Mr Reynolds on that occasion did not comply with s.119 of the 2011 Act and Regulation 4 of the 2023 Regulations.

34. On 27 March 2025 a meeting took place with the successful bidder. A £50,000 deposit was paid and an exclusivity agreement was signed, in terms which at least to some extent did not mirror the draft exclusivity agreement.

35. On the following day the tenant Company and the other bidders were notified that they had not been successful.

The Claimants' Submissions

The Applicable Law

36. S.117 of the 2011 Act provides that:-

"*Restrictions on dispositions of land: general*
(1) No land held by or in trust for a charity is to be conveyed, transferred, leased or otherwise disposed of without an order of—

(a) the court, or

(b) the Commission.

But this is subject to the following provisions of this section, sections 119 to 121 (further provisions about restrictions on dispositions) and section 127 (release of charity rentcharges).

…

(2) Subsection (1) does not apply to a disposition of such land if—

(a) the disposition is made to a person who is not—

(i) a connected person (as defined in section 118), or

(ii) a trustee for, or nominee of, a connected person, and

(b) the requirements of—

(i) (section 119(1) (dispositions other than certain leases), or

(ii)…

have been complied with in relation to it".

37. It was apparent from Mr Mead's statement that the Charity was attempting to use the s.119 exception which provides:-

"Requirements for dispositions other than certain leases
(1) The requirements mentioned in section 117(2)(b) are that the charity trustees must, before entering into an agreement for the sale, or (as the case may be) for a lease or other disposition, of the land—

(a) obtain and consider a written report on the proposed disposition from a designated adviser instructed by the trustees and acting exclusively for the charity, …

(c) decide that they are satisfied, having considered the adviser's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be

> obtained for the charity.
>
> …
>
> (3) For the purposes of subsection (1) a designated adviser is a person who—
>
> (a) is a fellow or professional associate of the Royal Institution of Chartered Surveyors or satisfies such other requirement or requirements as may be prescribed by regulations made by the Minister, and
>
> (b) is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question.
>
> (4) Any report prepared for the purposes of subsection (1) must deal with such matters as may be prescribed by regulations made by the Secretary of State".

38. Given the offer made in the 5 March 2025 letter and/or the up and coming FDR, the Defendants could not on 26 March 2025 when they met have "decide[d] that they are satisfied, having considered the adviser's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity".

39. Moreover, they had an obligation to act in the best interest of the Charity, see s.177 of the 2011 Act and s.1 of the Trustee Act 2000 also provides that:-

> "(1) Whenever the duty under this subsection applied to a trustee, he must exercise such care and skill as is reasonable in the circumstances, having regard in particular (a) to any special knowledge or experience that he has or holds himself out as having, and (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
>
> (2) In this Act the duty under subsection (1) is called the duty of care."

40. Certainly if the present proceedings were before the First-tier Tribunal (Charity), the Tribunal would be shocked by Mr Mead's statement and the absence of any evidence that the Defendants, when making their decision, considered the clear

guidance given to Charity Trustees by the Charity Commission:- https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making/decision-making-for-charity-trustees.

41. This showed in particular that trustees should act in good faith and the examples given showed that "it means trying to do the right thing, only in the best interests of your charity" which includes "choosing the option that is in your charity's best interests" and that the opposite would be "bad faith" including "intentionally benefiting someone in a way that is not in your charity's best interests. For example, choosing a supplier who offers a more expensive service, but who is a friend".

42. Further, trustees must take into account all relevant factors, such that decisions to sell the Land must include consideration of the on-going and expensive litigation. They must also identify and disregard irrelevant factors, which would include ill-feeling towards the Lount family.

43. Given the 5 March 2025 offer made by the Company, and the evidence contained in Mr Mead's statement, there was no basis advanced (and none could be deemed or inferred) for the Defendants to conclude that the offer made (and accepted) was the best that could reasonably be obtained, as:-

(a) the Company had offered £10,000 in excess of that offer; and

(b) its offer also contained terms as to the settlement of the proceedings which were advantageous to the Charity.

44. These types of internal management are matters in which the Court can intervene. In ***Children's Investment Fund Foundation (UK) v Attorney General*** [2020] UKSC 33, [2022] AC 155 at [216] Lord Briggs JSC said:-

> "The second, and main, ground is what is loosely described as the non-intervention principle, namely that the court will not generally interfere with the performance by fiduciaries of their duties unless they are acting, or threatening to act, in breach of duty, or have surrendered their discretion, and that the courts special jurisdiction over charities gives rise to no exception …

> Lady Arden JSC deals with this ground on the assumption that Dr Lehtimki's stance involved neither a breach nor a threatened breach of his fiduciary duty. On that basis she concludes that the non-intervention principle, important though it undoubtedly is, cannot be without exception, either in the law of trusts or a fortiori in relation to charities and that this case is, on its very unusual facts, just such an exception. In particular she concludes, and I agree, that the court's jurisdiction to intervene in the affairs of charities extends beyond its trusts jurisdiction more widely than just in relation to schemes."

45. It followed that the High Court had jurisdiction to interfere with a clear anticipated breach of trust and fiduciary obligations.

46. The proceedings were charity proceedings within s.115 of the 2011 Act, although the present application for an interim injunction was made under s.37 of the Senior Courts Act 1981. The Court had jurisdiction to grant an interim injunction in what would be "charity proceedings" before the s.115 authority or leave had been granted. Such was clear from Birss J's (as he then was) decision (albeit without expressly referring to s.37) in ***Choudhury v Stepney Shahjalal Mosque & Cultural Centre Ltd*** [2015] EWHC 743 (Ch), where he stayed the proceedings (so that permission could be sought), but also continued an Interim Injunction.

47. The Charity Commission was provided with the proceedings at the same time as they were issued, their view/intervention was sought, and a formal application would be made in the week after the hearing, now the Charity had set out its position in Mr Mead's statement on an open basis and in the light of the judgment made on this application.

48. As to the appropriate Claimants to the claim, the Charity is a local charity, such that any two or more inhabitants of the area of the charity have standing to bring a claim under s. 115(1)(d). Mr Mead appeared to accept that three of the Claimants - C1, C3 and C4 - were in "the Parish". There was an issue (which could not and need not be resolved) as to the extent of the parish boundaries (for the purpose of the statutory provision). There were of course different boundaries for a local government parish and a Church of England one. The Church of England ones appeared to have changed in the last few months (see the First Defendant's interview in August 2024

with a local newspaper).

49. Furthermore, under s.115(1)(c) C6 was a director of the Company (as well as being a local). Again the Court could not decide at this hearing, but there were strong arguments that he did qualify under (c). His and his Company's claim was not adverse to the Charity; quite the reverse, the claim was made for the benefit of the Charity (for it to obtain the best financial outcome). In ***Haslemere Estates v Baker*** [1982] 1 WLR 1109 at 1122 Sir Robert Megarry VC said:-

> "An interest which is adverse to the charity is one thing, an interest in the charity is another. Those who have some good reason for seeking to enforce the trusts of a charity or secure its due administration may readily be accepted as having an interest in the charity, whereas those who merely have some claim adverse to the charity, and seek to improve their position at the expense of the charity, will not. The phrase, I think, is contemplating those who are on the charity side of the fence, as it were, however much they may disagree with what is being done or not being done by or on behalf of the charity. The phrase does not refer to those who are on the other side of the fence, even if they are in some way affected by the internal affairs of the charity."

50. Huntsmen and tenant farmers co-operating with the National Trust in the management of the Trust's land had a sufficient interest to bring charity proceedings to challenge the Trust's decision not to renew licences to hunt on the land, see ***Scott v National Trust for Places of Historic Interest or Natural Beauty*** [1998] 2 All ER 705.

51. The Attorney-General was required to be a party to the proceedings and was proposed to be joined as the Twelfth Defendant. He had been served with the proceedings in draft, but to date no response had been received from him.

American Cyanamid

52. The application for an interim injunction was made under s.37 of the Senior Courts Act 1981 and the Court would need to consider the well-known principles set out in ***American Cyanamid Co v Ethicon Ltd*** [1975] AC 396 (HL) (and found in the White Book 2025, vol. 2 at section 15).

A serious question to be tried

53. As set out above, there was a clearly a serious question to be tried, as on the available limited evidence (by reason of the Defendants' decision, which was their right at this stage of the litigation, to provide very limited disclosure of their decision making process) there was a strong case that a sale to the proposed unknown buyer would be a breach of their obligations to the Charity. As the Defendants were well aware, the obligation upon them was not to run a fair or transparent process, but to act in the best financial interest of the Charity. Nowhere in Mr Mead's statement did he assert that they had done so.

54. If the claim were successful, and the Defendants had entered into any form of binding agreement to sell the Land (the existence of which was not asserted by Mr Mead, but the picture was at best unclear), such an agreement was (at the very least) voidable, and in the context of what appeared to be deliberate actions to prevent a sale to the Company in the best interest of the Charity, such agreement (or sale) would be void, see ***Tudor on Charities*** (11th ed.) at paragraphs 17-027 and 17-042.

Balance of Convenience

55. It followed on from that last point that (at this stage) the sale could not safely proceed until the Court had resolved the issues raised by the Defendants' conduct of the sale to date. No doubt after the hearing, that was something which they could consider and (in fact) in the circumstances should seek the Court's formal "blessing" for the sale.

56. In the meantime, the Court should hold the ring by granting the injunction (i.e. preserve the status quo). Whilst if the Defendants had chosen to place more details of the proposed sale process before the Court, it would be in a position to make a more refined injunction (perhaps allowing certain steps to be undertaken or providing for deadlines), that could not be considered on the present state of the evidence.

57. Of course, the Defendants could return to Court and seek amendments/discharge of the injunction if matters developed or changed.

Damages not an adequate remedy for the Claimants

58. It mattered little whether it was the Defendants themselves or their insurer who made good the (considerable) losses which the Charity would suffer by selling the Land in the present circumstances. Such losses would, however, be hard to assess or compute.

59. Certainly from C6's position, as somebody interested in the Company, the breaches of trust by the Defendants could not be compensated by damages, as the Land was advertised effectively on the basis that the buyer could obtain vacant possession at the end of the lease. If the Land were sold to a third party, it followed that C6 risked losing the family business which had operated from the Land for 100+ years. As set out above, the Court would need in due course to decide whether the Defendants had acted inappropriately to deliberately deprive the Company of the opportunity to purchase the freehold of the Land.

Damages an adequate remedy for the Charity/Cross-Undertaking

60. C1, C3, C4 and C6 would offer a cross-undertaking in the usual terms. As to the loss which might be suffered by the Charity if at trial it were shown that the interim injunction were wrongly granted, Mr Mead's statement was confused. However, it appeared from what he said at paragraph 27 that the Charity asserted that it would lose interest at 4% on the proceeds of sale. As it did not want to reveal the sale price, the figure taken was £2,000,000, providing a loss of interest income of £6,666 per month. However, the rental income received from the Company was £71,500 per year, which was £5,958 per month (i.e. almost £6,000). It followed that the potential sum due on the cross-undertaking was put at less than £700 per month (which in context was de minimis). If there were any concerns as to its recoverability, such could be dealt with by the Claimants agreeing to place, say, £10,000 (or such sum that the Court thought fit) with their solicitors to fortify it.

61. It followed that (in effect), insofar as there was any balancing to be undertaken, it overwhelmingly favoured the granting of an interim injunction (which in fact should have been unnecessary).

62. The Court was invited to make the interim injunction sought. The Claimants would then attempt to expedite the process of obtaining a decision from the Charity

Commission on permission to continue the proceedings and then the matter could be listed urgently for directions. It was feasible for a trial to be heard in a matter of months. The Defendants had not disclosed the terms of their agreement with the unknown buyer, but the draft provided for a 16 week period and it was feasible that the matter could be expedited and tried inside that period. Alternatively, it might be that the continuation of the proceedings was unnecessary, as the Charity Commission might well intervene and ensure that the Defendants complied with their obligations.

The Defendants' Submissions

Striking out the Claim

63. Mr Winfield for the Defendants submitted that it was not disputed that:

(1) the proceedings were "charity proceedings" within s.115(8) of the 2011 Act

(2) to bring the claim the Claimants needed authorisation from the Charity Commission under s.115(2) of the Act or, if that were refused, leave of the Court under s.115(5)

(3) a claim brought without s.115 authorisation/leave was usually stayed.

64. The Court could, however, dismiss a claim brought without s.115 authorisation/leave in an appropriate case, see ***Kaur v Malhi*** [2022] EWHC 2219 (Ch) at [19]-[20].

65. The purpose of the requirement for s.115 authorisation/leave had been summarised as follows:

> "This protective filter is intended to protect public officers, public bodies and charities from being harassed by a multiplicity of hopeless challenges" (***Scott v National Trust*** at 713a).

66. This claim is clearly abusive and unmeritorious:

(1) it fell outside the categories of "charity proceedings" as summarised in ***Tudor on Charities*** (11th ed) at paragraphs 16-019 and 16-020

(2) the Claimants fell within the description of persons "who merely have some claim adverse to the charity, and seek to improve their position at the expense of the charity" (see ***Haslemere Estates v Baker*** at p.1122B–E), who do not have standing to bring charity proceedings.

(3) an essential element to the grant of authorisation/leave to bring charity proceedings is that the claimants have a legally sustainable claim advanced in good faith (see the Charity Commission's Guidance CC38 Charities & Litigation: the legal underpinnings (2016.08) page 12 paragraph 5.9 and ***Garcha v Charity Commission*** [2014] EWHC 2754 (Ch) at 12e).

(4) it was obvious from C6's witness statement that the Claimants were not acting in good faith— i.e. they were not motivated by a desire to protect the Charity and its objects from a breach of trust or duty; they were acting purely in interests of the Company and the Lount family as disappointed bidders for the freehold.

(5) they issued the claim and application without applying for s.115 authorisation, despite knowing that it was necessary.

67. In the circumstances:

(1) it would be unjust to the Charity to allow this clearly unmeritorious, abusive and procedurally defective claim to continue; and

(2) the Court was in a position to conclude from material put before it in this application that s.115 authorisation should not be granted, so that the Court should strike out the claim form under CPR r.3.4(2)(a) or (b) (see the White Book 2025 vol. 1 p.94) or its inherent jurisdiction.

Refusal of pre-authorisation injunction

68. There was jurisdiction for the Court to grant an injunction pending the grant of s.115 authorisation but:

(1) the Claimants had provided insufficient evidence of urgency

(2) the fact that they knew that s.115 authorisation was required weighed against the grant of an injunction at this stage (see ***Kaur v Malhi*** at [21]–[23])

(3) the fact that they knew that s.115 authorisation was required and had deliberately declined to apply before issuing pointed overwhelmingly against the grant of relief.

Lack of standing of C2, C5 and C6

69. Three of the six Cs have no standing:

(1) C2, C5 and C6 are not inhabitants of the area of the charity as required by s.115(1)(d) of the 2011 Act:

(a) the "area of the [Charity]" is the *parish* of Bridlington: the 1870 Scheme schedule paragraphs 24–27; but

(b) C2 lives in Bessingby, C5 lives in Hilderthorpe and C6 lives in Sewerby Cum Marton

(2) C6 is not a "person interested" within s.115(1)(c) of the Act: he is clearly not "on the [Charity's] side of the fence" (see ***Haslemere Estates v Baker*** at p.1122D–E) - he is acting in interests of himself and the Company.

70. So if the claim were not dismissed, the Court should order that C2, C5 and C6 cease to be parties under CPR r.19.2(3) (the White Book 2025 p.551).

71. Further, the claim was defective because the Attorney General was not a party which was required by CPR PD 64A paragraph 7 (the White Book 2025 p.2219).

Merits of interim injunction application

72. If, despite the abusive nature of the claim, the Court did not strike it out, and the Court did not dismiss the interim injunction application on the grounds that it was premature, but considered it on its merits, it was submitted that the interim injunction should be refused, for the reasons set out below.

Law

73. The principles in ***American Cyanamid v Ethicon*** per Lord Diplock at pp.407G–408F governed this application for an interim injunction. The submissions set out below addressed those in order.

Serious question to be tried

74. There is no serious question to be tried:

(1) it was clear from C6's witness statement that the claim amounted to no more than a complaint that the Defendants had refused to sell the freehold to the Company. The Claimants had no legally enforceable rights in that context.

(2) the Court should not interfere with the Defendants' performance of their duties with regard to the sale of the freehold unless they have acted or are threatening to act in breach of duty (see ***Children's Investment Fund Foundation (UK) v Attorney General*** per Lord Briggs JSC at [216]).

(3) there is no basis on the face of the claim and supporting evidence to argue that the Defendants are in breach of duty. They have conducted a fair and transparent process for the sale of the freehold and one which complied with the requirements of Part 7 of the 2011 Act and the 2023 Regulations

(4) there is no known authority in which the Court has restrained the disposal of land where a charity or its trustees have complied with s.119 of the Act (or its predecessor, s.36 of the Charities Act 1993).

(5) further, there is authority (under earlier legislation restricting the disposal of charity land) that, where the Charity Commission has power to authorise a disposal, it must do so if the contract is valid (***Moore v Clench*** (1875) LR 1 ChD 447 (Ch) at 452). It followed that, as the Defendants have complied with the statutory requirements, the Charity Commission has no basis on which to interfere with the disposal of the freehold of the Land.

75. There is, therefore, no prospect of the Claimants obtaining the relief which they seek.

Damages an adequate remedy

76. Damages will be an adequate remedy for the Claimants, so the injunction should not be granted (per ***American Cyanamid*** at 408C):

(1) the Claimants' position was that the purpose of the claim and application was to protect the Charity from the loss of funds if the freehold of the Land were sold at less than the maximum price on offer

(2) it followed that, if the injunction were not granted and the Defendants did sell at an undervalue, the Claimants' remedy would be financial compensation from Defendants for their breach

(3) the Defendants have an insurance policy which would indemnify them against any relevant losses, as was clear from Mr Mead's first witness statement and the policy documents attached thereto.

77. If the Court did not accept that damages would be an adequate remedy for the Defendants:

(1) the Defendants accepted that damages would be an adequate remedy for the Charity, since its losses would relate to the wasted costs and loss of bargain of an aborted sale of the freehold but

(2) the Claimants' evidence as to their ability to meet those losses was inadequate.

Balance of convenience

78. The balance of convenience was in favour of refusing the injunction, as granting it was likely to put the Defendants in breach of the exclusivity agreement with the prospective purchaser.

79. Further, when considering the balance of convenience:

(1) the Court should weigh the relative strength of the parties' cases where they were disproportionate (see ***American Cyanamid*** at p.409B–C])

(2) the Claimants' case was extremely weak, for the reasons set out above.

Cross-undertaking in damages

80. The Claimants' evidence was inadequate to demonstrate their ability to meet the undertaking in damages:

(1) the only evidence related to the assets of C6, who had no standing to be a claimant

(2) the evidence of a pension fund on which he relied did not clearly show that he had sufficient liquid funds.

Conclusion

81. Both the claim and the injunction application were obviously premature, unmeritorious and abusive and should be struck out and dismissed.

82. If the Court did not accept that and stayed the claim, C2, C5 and C6 must be removed as parties and the Attorney General added as the Twelfth Defendant.

Discussion

The Identity of the Claimants: Local Inhabitants

83. The Charity is a local charity, such that any two or more inhabitants of the area of the charity have standing to bring a claim under s.115(1)(d) of the 2011 Act. It is common ground that three of the Claimants - C1, C3 and C4 - are in "the Parish". The action is therefore properly constituted.

84. It is, however, disputed whether C2, C5 and C6 live in "the parish" and are therefore "inhabitants of the area of the charity".

85. The "area of the [Charity]" is the parish of Bridlington, as appears from paragraphs 24–27 of the schedule to the 1870 Scheme schedule. However, Mr Mead in his witness

statement stated that C2 lives in Bessingby, C5 lives in Hilderthorpe and C6 lives in Sewerby Cum Marton rather than in the parish of Bridlington. He exhibited a map which, he said, showed the boundaries of the parish of Bridlington and where the Claimants lived in relation to those boundaries. C2, C5 and C6 lived outside them and were not therefore proper claimants in the action. The provenance and identity of the map was not, however, explained, either in the witness statement or during the hearing.

86. Moreover, on the day before the hearing NNB Law sent to Lupton Fawcett a letter exhibiting a different map (which has last been updated on 1 February 2024 from the website at https://www.genuki.org.uk/big/eng/YKS/ERY/Bridlington/BridlingtonMap (which I had found separately in my own researches on the day of the hearing and which I raised with the parties at the outset of the hearing). This showed that the parish of Bridlington was a much larger area than shown on Mr Mead's map and consisted of 8 divisions, not only including Bridlington, but also including Hilderthorpe (where C5 lives) and Sewerby Cum Marton (where C6 lives), but not Bessingby (where C2 lives).

87. The letter also enclosed an article from the Bridlington Echo of 5 August 2024 confirming that the parish boundaries of Bridlington had increased to take in parts of Sewerby (and Bridlington Quay, although nothing turns on that). On the day of the hearing Mr Mead produced a second witness statement to the effect that the area of the parish of Bridlington was the area defined in 1870, not the area as altered in 2024 and that the Defendants had not changed their area of activity since last year and they had no intentions of enlarging the area of the Charity's operation to the new parish of Bridlington.

88. That might raise a question as to whether the parish boundaries were those or 1870 or those existing today, but I note that the Genuki map is said to be based on Kain, R.J.P., Oliver, R.R., *Historic Parishes of England and Wales: an Electronic Map of Boundaries before 1850 with a Gazetteer and Metadata [computer file]*. Colchester, Essex: History Data Service, UK Data Archive [distributor], 17 May 2001. SN: 4348 (which suggests that the 2024 reorganisation may not affect the matter of the Claimants' standing in any event).

89. On the limited (and contradictory) evidence before me, I cannot definitively determine whether C5 and/or C6 do or do not have standing within s.115(1)(d), but there is an arguable case that they do.

90. There is also an issue (which again I do not need to determine) as to whether the boundaries of the parish are the local government ones or the Church of England parochial ones. That the Vicars and churchwardens of the parishes of Bridlington and Bridlington Quay are ex officio trustee suggests that the parish as defined is the ecclesiastical one. The inclusion of the Chairman of the Local Government Board for the District of Bridlington might point in the other direction, but for present purposes that does not matter.

91. I am therefore satisfied that C1, C3 and C4 are "inhabitants of the area of the charity" and have standing to bring the action. There is also an arguable case that C5 and C6 are also local inhabitants within that area, although I do not need to decide that question. It is difficult to see how C2 is qualified to bring the action on either party's case, since no map shows Bessingby as being within the parish boundaries, although in the circumstances I do not need to decide that question either.

The Identity of C6 as a person interested

92. I turn to C6's alternative standing under s.115(1)(c) as a person interested in the Charity. C6 is a director of and shareholder in the Company. Mr Mitchell submitted that there were strong arguments that he also qualified as claimant under head (c). His and his Company's claim was not adverse to the Charity; quite the reverse, the claim was made for the benefit of the Charity (for it to obtain the best financial outcome) and in that context he relied on Sir Robert Megarry VC's judgment in ***Haslemere Estates v Baker*** at p.1122D-E to the effect that:

> "An interest which is adverse to the charity is one thing, an interest in the charity is another. Those who have some good reason for seeking to enforce the trusts of a charity or secure its due administration may readily be accepted as having an interest in the charity, whereas those who merely have some claim adverse to the charity, and seek to improve their position at the expense of the charity, will not. The phrase, I think, is

> contemplating those who are on the charity side of the fence, as it were, however much they may disagree with what is being done or not being done by or on behalf of the charity. The phrase does not refer to those who are on the other side of the fence, even if they are in some way affected by the internal affairs of the charity."

93. Mr Mitchell sought to rely on the decision of Robert Walker J in ***Scott v National Trust for Places of Historic Interest or Natural Beauty.*** That, however, was an entirely different case and is of no assistance to C6. What Robert Walker J said at p.715c-g was that

> "In this case the Devon and Somerset staghounds and the Quantock staghounds have been hunting deer on Exmoor and the Quantocks since long before the National Trust owned land there. Whether their activities are regarded as laudable or deplorable, the affidavit evidence makes out a strong case that they are an important part of the rural economy in contributing to deer culling, in providing a service in destroying and removing sick and injured beasts, and generally in deer management—the need for which was recognised and strongly emphasised in the Savage working party recommendations. They contribute to the local economy through livery stables, bed-and-breakfast accommodation and in other ways. They freely co-operated with the research carried out over an 18-month period by Professors Bateson and Dr Bradshaw on behalf of the National Trust. Their co-operation is clearly still needed, and hoped for, by the National Trust in any modified schemes of deer management which may be needed as a result of deer-hunting ceasing on National Trust land (except for the 750 hectares or thereabouts of the Dunkery Estate).
>
> I find it quite impossible to equate the plaintiffs' position with that of the commercial property developer in the *Haslemere Estates* case. It seems to me that until this year and for many years the hunts and the tenant farmers have been in a loose, but nevertheless, a real sense, partners with the National Trust in the management of its land on Exmoor and the Quantocks, and in the successful preservation of the red deer population, whose preservation can fairly be regarded as one of the National Trust's statutory purposes under s 4(1) of the National Trust Act 1907."

94. The relationship of the Defendants to the family Company is that of landlord and tenant under a business lease. It is entirely removed from the situation in ***Scott*** where for many years the hunts and the tenant farmers had been in a loose, but nevertheless, a real sense, partners with the National Trust in the management of its land. On the

contrary, the relationship is far closer to that of the commercial property developer vis-à-vis the charity trustees in the ***Haslemere Estates*** case. That becomes even more apparent when one sees what Sir Robert said in context, before the remarks cited above at pp.1121D-1122C, to the effect that (with emphasis added)

> "Mr. Scott, of course, submitted that the term should not be construed narrowly, and that it was intended only to exclude officious intermeddlers. He contended that the contract with the governors sufficed to bring the plaintiffs within the expression; and he referred to certain authorities on the law as it stood before the Charities Act 1960 came into force. Mr. Burton, who was permitted to address the court after Mr. Price had concluded his reply, developed these submissions somewhat, and ended by contending that if charity proceedings related to property, any person interested in the property was a person "interested in the charity."
>
> *Mr. Price contended that a person whose only connection with the charity was that he had a contract with the trustees relating to property of the charity was not a person who could be said to be "interested in the charity" in any real sense of that expression.*
>
> *In the essentials I think that Mr. Price is right in his submissions* ... When subsections (1), (2) and (8) of section 28 are put together, it is clear, first, that what is being dealt with is a special type of proceedings, namely, those brought under the age-old equitable jurisdiction over charities and charitable trusts, and known as "charity proceedings". There is no question of the provisions relating to proceedings in general, whatever the type. Second, those proceedings are contemplated as being taken "with reference to a charity" or as "relating to a charity". Third, the phrase is "any person interested in the charity", not any person who " has an interest in the charity's property", or any person who "has a claim against the charity". Fourth, that phrase is to be construed not on its own, but in relation to those who are to be permitted to take the special type of proceedings known as "charity proceedings".
>
> Now I do not aspire to define the meaning of the phrase "any person interested in the charity" in this context. That I shall leave for others; I am merely concerned to find a safe resting place for my decision in this case. In my judgment the phrase, in its context, does not bear the wide meaning for which Mr. Scott and Mr. Burton contend. *Many a person may be interested in the property of a charity without, for this purpose, being interested in the charity. I do not think that to contract with the trustees of a charity turns the contractor into a "person interested in the charity", even if the contract relates to land or other property of*

> *the charity. I do not think that the phrase includes every tenant of charity land,* or those who have easements or profits or mortgages or restrictive covenants over charity land, or those who contract to repair or decorate charity houses, or those who agree to buy goods from the charity or sell goods to the charity."

95. Moreover, and particularly in the light of the bad relations between the Company and its director, C6, and the Defendants, which have been on foot for 15 years and engendered two sets of legal proceedings before this one, it is clear that in reality C6 and the Company have a claim adverse to the Charity and are seeking to improve their position at the expense of the Charity. They are not, in any meaningful sense, "on the charity side of the fence", however much they may disagree with what is being done by or on behalf of the Charity. They are in fact "on the other side of the fence", even if they will be affected by the internal decision of the Charity to sell the Land to another third party bidder.

96. In addition, the Defendants and the Company (not C6) are in a contractual relationship under a business lease, nut that is not the subject matter of the present action, although it provides the context in which the present dispute arises. The Defendants and the Company (again, not C6) are not in a contractual relationship vis-à-vis the sale of the freehold of the Land. The context in which the present dispute arises is that the Defendants have decided to sell the freehold of the Land and the Company (again, not C6) has failed in its bid to purchase the property, which is now to be sold to a rival third party bidder.

97. In my judgment, C6 is not a "person interested" within the meaning of s.115(1)(c) of the 2011 Act. He is clearly not "on the [Charity's] side of the fence"*;* on the contrary*,* he is acting in interests of himself and the Company. He is, however, arguably entitled to be a Claimant by virtue of s.115(1)(d) for the reasons set out above.

98. The claim was initially defective because the Attorney General had not originally been made a party as required by CPR PD 64A paragraph 7, but Mr Mitchell explained that that was because of a glitch and that it had been intended to serve him at the outset. By the time of the hearing, that omission had been partially rectified and the

draft of the proceedings had been served on him, albeit not formally by way of service of a sealed copy, although he had not yet replied to them.

The Sale

99. In his email of 4 March 2025 Mr Reynolds on behalf of the Defendants stipulated that

> "3. Your offer. This should be a fixed sum payable to acquire the freehold interest in the subject property subject to the lease to [the Company]. Please also state the amount of your offer in words. NB Any offers made that are calculable only by reference to another offer will not be considered.
>
> ...
>
> 5. Please include details and evidence of the source and availability of funding for the purchase. If your offer is subject to bank funding please provide correspondence detailing support to fund your offer."

100. It can immediately be seen that the Company's response of the following day did not comply with those stipulations in two material ways. In the first place, and so far as the second alternative offer was concerned, the Defendants had made it clear that offers made which were calculable only by reference to another offer would not be considered. More fundamentally, details and evidence of the source and availability of funding for the purchase were not disclosed.

101. In addition the offer stated that

> "9. This Offer is open for acceptance for 21 days (i.e. until 4pm on 27th March 2025)."

102. The offer was rejected by Lupton Fawcett on 11 March 2025:

> "5. ... Your client's offer is not made in accordance with the agent's briefing note, which made it clear that offers over £2,000,000 were to be submitted.
>
> ...

> 7. If your client wishes to bid for the property then it should do so on an open basis (and not on a without prejudice basis) to the Trustees' agent, Sanderson Weatherall, in accordance with the agent's notification to all prospective purchasers."

103. As explained above, whether it was the agent's original briefing note which stipulated that offers over £2,000,000 were to be submitted is a moot point, but it was now apparent from 11 March 2025 that what was required was an open offer *over* £2,000,000.

104. On 17 March 2025 Mr Anderson emailed Mr Reynolds that

> "3. My clients' offer to acquire the freehold interest in the subject property subject to the lease to H. Lount & Son Ltd is £2,000,000 (two million pounds).
>
> ...
>
> 5. Proof of funds will be provided within 7 working days of acceptance of the offer."

105. Again, however, details and evidence of the source and availability of funding for the purchase were not disclosed. Indeed it is worthy of note that, even at the date of the hearing in late April, no such details had been disclosed. There was therefore no evidence before the Defendants – and indeed on evidence before the Court – as to how the purchase was to be funded. The Claimants have, even now, sedulously refrained from providing such details.

106. In addition, whatever may have been the case on 4 March, it was clear on 11 March and afterwards that only an offer "over" £2,000,000 not "of" £2,00,00 would be considered.

107. More fundamentally, there was no repetition of the offer of 5 March 2025, whether as part of the Company's letter or in parallel with it. The offer of 5 March 2025 was a composite whole. As it said

> "We write to propose a settlement of the on-going litigation, which *implicitly includes* a scheme which once implemented

> would result in a full and final separation of our clients' respective interests."

108. There was nothing in the earlier letter which suggested that part of it was severable from any other part. It was all or nothing. The only construction which can be put on the later letter of 17 March 2025 was that the earlier composite offer (which itself did not comply with the bidding proves because it did not disclose ability to fund the purchase) was withdrawn.

109. On 26 March 2025 the Defendants met with Mr Reynolds, who explained the results of the bid process. The Defendants decided to accept the highest bid, which was not that of the tenant Company. On 27 March 2025 a meeting took place with the successful bidder. A £50,000 deposit was paid and an exclusivity agreement was signed. On the following day the tenant Company and the other bidders were notified that they had not been successful.

110. Mr Mitchell sought to argue that what had happened at the meeting on 26 March 2205 was not statutorily compliant with s.119 and the 2023 Regulations. It is Mr Mead's evidence, which despite his best endeavours Mr Mitchell was not in a position to gainsay, that his advice in January 2025 was compliant with the statutory requirements and there is nothing to suggest that that was not the case.

111. Mr Winfield rightly submitted (and Mr Mitchell was constrained to accept) that the Defendants were under no obligation in advance of disclosure at the proper time in this action to provide early disclosure of their own internal procedures and I can see no basis for criticising the trustees from adopting that stance.

112. In ***Buttle v Saunders*** [1950] 2 All ER 193, Wynn-Parry J observed at p.195D-E that

> "Trustees ... have an overriding duty to obtain the best price which they can for their beneficiaries. It would, however, be an unfortunate simplification of the problem if one were to take the view that the mere production of an increased offer at any stage, however late in negotiations, should throw on the trustees a duty to accept the higher

> offer and resile from the existing offer. For myself, I think that trustees have such a discretion in the matter as will allow them to act with proper prudence. I can see no reason why trustees should not pray in aid the common-sense rule underlying the old proverb: 'A bird in the hand is worth two in the bush.' I can imagine cases where trustees could properly refuse a higher offer and proceed with a lower offer. Each case must, of necessity, depend on its own facts."

113. On the facts of this case, I can see no objection to the Defendants praying in aid the maxim of the bird in the hand. They have not in fact refused the higher offer and procced with the lower offer. They have proceeded with the higher offer and rejected the lower offer, but the lower offer was also one which was not compliant with the bidding process, was one which did not match the necessary criterion of being over £2,000,000 and one which never descended to demonstrating that the Company had the wherewithal to purchase the freehold which was offered for sale.

114. On those facts the Defendants were more than justified, in my judgment, in taking the bird in the hand and accepting the higher bid of the third party purchaser and not accepting either of the offers by the Company.

115. There is no basis for arguing that the Defendants would be acting in breach of trust in selling the freehold of the Land in the Circumstances which have happened.

116. On the contrary, in my judgment, Mr Winfield was right to contend that the proceedings are in fact an attempt to frustrate the proposed sale of the freehold and thus to compel the Defendants to sell it to either the Company or C6 (or perhaps persons connected with him), despite the fact that the Company was unsuccessful in (and did not comply with) the bidding process, and despite more than one opportunity to comply with that process and put in a highest bid.

117. One can perfectly well understand why the Company via the other Claimants and C6 have taken the proceedings given that the Lount family has been on the site for more than a century have run the caravan park for four generations and seek long term security on the effluxion of the present business tenancy in 2034, although that

is almost a decade away, but that does not turn a claim which has no reasonable prospects of success into one which should remain on foot, albeit stayed until after any decision of the Charity Commission.

118. I have considered whether the correct course of action is to stay the claim pending the determination of the Charity Commission, but am satisfied that the matter is sufficiently clear cut and that I should untie the Gordian knot now by striking out the proceedings as having no reasonable prospect of success.

Conclusion

119. For these reasons, I am satisfied that the claim should be struck out and the application dismissed.

120. I direct that the parties serve short written submissions by 4pm on Friday 9 May 2025 as to the costs of the application and the claim, although as at present advised I see no reason why costs should not be summarily assessed and should not follow the event. I would need to be persuaded that the basis for the assessment of costs should be on anything other than the standard basis.

121. I will determine the incidence and amount of costs on the papers without a further oral hearing. I note that the two schedules of costs are virtually the same on both sides, so that arguments about excessive costs on one side are unlikely to have much traction. It is, of course, open to the parties in the light of these indications to agree the costs instead of having the Court summarily assess them.

122. On the determination of the costs, I will invite counsel to draw up an agreed order for my consideration giving effect to what I have determined above.