



Neutral Citation: [2025] UKFTT 00461 (TC)

Case Number: TC09498

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

In Taylor House, London

Appeal references: TC/2021/13108  
TC/2021/13129

*INCOME TAX AND CAPITAL GAINS TAX – residential property – whether an adventure in the nature of a trade – whether principal private residence – appeals allowed*

**Heard on:** 11 to 14 March 2025  
**Judgment date:** 23 April 2025

**Before**

**TRIBUNAL JUDGE ANNE REDSTON  
MS SONIA GABLE**

**Between**

**RAYMOND CHARLES EYRE  
DIANA EYRE**

**Appellants**

**and**

**THE COMMISSIONERS FOR  
HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Mr Laurent Sykes KC, instructed by Saffrey LLP

For the Respondents: Mx Cleo Lunt, Litigator of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

1. At all relevant times, Mr and Mrs Eyre (“the Eyres”) owned a house in Holland Park (“the Holland Park House”). On 15 September 2010, the Eyres purchased another house in Burnshall Street, Chelsea for £9,750,000. They demolished that property and built a new house on the same site, which they sold for £27,150,000. In this decision, we have called the property in Chelsea “Burnshall Street” both before and after the rebuild.

2. Mr and Mrs Eyre submitted their self-assessment (“SA”) tax returns on the basis that Burnshall Street had been their principal private residence (“PPR”). HMRC decided that its purchase, redevelopment and sale constituted an adventure in the nature of a trade, and if they were to be wrong in that, so that the sale of Burnshall Street was subject to capital gains tax (“CGT”), it was not the Eyres’ PPR. HMRC issued Mr Eyre with an income tax assessment of £1,761,446.18 and issued Mrs Eyre with an assessment of £1,566,853.41. The Eyres appealed.

3. Mr and Mrs Eyre were represented by Mr Laurent Sykes KC, while Mx Cleo Lunt appeared for HMRC. We were greatly assisted by their clear submissions, both written and oral, and we were also grateful for the work carried out behind the scenes by their instructing accountants and solicitors.

4. For the reasons set out in the main body of this decision, we found that the purchase, redevelopment and sale of Burnshall Street was not an adventure in the nature of a trade, and we also found that Burnshall Street was the Eyres’ PPR from the date of its occupation in July 2013 until they left in February 2014.

### THE *LEE* CASE

5. When submitting their SA returns, Mr and Mrs Eyre had time-apportioned the gain on the sale of Burnshall Street, on the basis that PPR applied from the date they opted the property for CGT purposes, a few days after they moved in. Whether time-apportionment was appropriate was thus not in issue between the parties at the time HMRC made the assessments which were under appeal.

6. The Eyre’s appeal was originally listed to be heard on 24 March 2023, but on the day of the hearing, the Eyres’ counsel (not Mr Sykes) said he had identified the recent Tribunal judgment in *Lee v HMRC* [2022] UKFTT 175 (TC). This had also involved the development of a property; the Tribunal had allowed the appeal on the basis that PPR applied to the whole gain and no time-apportionment was required. At the time of the Eyres’ hearing, that decision was under appeal to the Upper Tribunal (“UT”).

7. HMRC applied for the Eyres appeal to be adjourned until after the UT judgment in *Lee*. On 29 September 2023, the UT upheld the FTT decision, see [2023] UKUT 00242 (TC), and the Eyres’ case was then relisted.

8. The parties jointly asked us not to decide whether, and if so how, the outcome of the *Lee* case changed the quantum of the tax payable by Mr and Mrs Eyre, but instead to leave that matter for the parties to resolve. In the absence of submissions, and as both parties asked us not to decide that matter, we have not done so. We return to it at the end of this decision.

### PRELIMINARY ISSUE

9. At 11.17am on the day before the hearing, Saffery LLP, the Eyres’ representative filed and served an application to admit a witness statement from Mr Tolmie-Thomson, an estate agent who was involved in the sale of Burnshall Street.

10. We considered the application at the beginning of the hearing. Mr Sykes recognised that the witness statement had been provided very late, and said that:

(1) He had been newly instructed in January 2025, and advised that further witness evidence would be of assistance; following that advice, three further witness statements were served in early February 2025 without objection from HMRC.

(2) At the same time, efforts were also made to contact an estate agent called Mr Gareth Jones, who had communicated with the Eyres about the Holland Park House. After considerable delay, Mr Jones had responded on Friday 10 March 2025, saying that his current employer would not allow him to give evidence. The Eyres then approached Mr Tolmie-Thomson, who agreed to provide a witness statement. This was deposed on Monday 13 March and filed and served the same day, being the day before the hearing.

(3) The evidence which could be given by Mr Tolmie-Thomson was “very important” and the Eyres would be prejudiced if his witness statement was not admitted.

(4) The statement was short; Mr Tolmie-Thomson could attend to give oral evidence, and it could be accommodated within the timetable for the hearing.

11. Mx Lunt accepted that the evidence in the new witness statement was relevant, and also agreed that Mr Tolmie-Thomson’s oral evidence could be accommodated within the time allocated for the hearing, but objected to the statement being admitted. Mx Lunt said the Eyres had breached the Tribunal’s directions for the provision of witness evidence, and applying the principles in *Martland v HMRC* [2018] UKUT 178 (TCC) (“*Martland*”), the breach was both serious and significant; there was no good reason and the balance of prejudice favoured HMRC. Mx Lunt supported that submission by the following points:

(1) HMRC had already had to deal with the Eyres’ failures to comply with the Tribunal’s directions relating to witness statements; those served in February 2025 were over two years late, but HMRC had not objected.

(2) The very late service of this new witness statement had disrupted preparation for the hearing.

(3) If the evidence were admitted, Mx Lunt would need to find additional time to prepare their cross-examination of the new witness.

(4) The Eyres knew Mr Tolmie-Thomson had been involved at the relevant time, and there was no good reason why they could not have made contact with him much sooner.

(5) This case had been listed for a hearing in 2022, but on the first day of that hearing, the Eyres’ counsel had raised the *Lee* case, and this had led to the hearing being adjourned. Mr Tolmie-Thomson’s very late witness statement was another example of the same pattern of “introducing new evidence and new arguments at the last minute and not in line with the Tribunal’s deadlines”.

12. In Reply, Mr Sykes rejected the last of those points, saying that although he had not been instructed at the time of the previous hearing, he understood that the Eyres had been willing to proceed despite the new point of law; it was HMRC who asked for the appeal to be adjourned and stayed behind the *Lee* case. The Eyres had subsequently made a claim for costs against HMRC on the basis that it had been unreasonable of them not to proceed with the hearing, although that claim was subsequently withdrawn. In Mr Sykes’ submission, there was no pattern of trying to “wrong-foot” HMRC by producing last-minute surprises.

13. After taking time for consideration, we told the parties that the application was allowed. We gave brief reasons orally and said we would set out full reasons in this judgment. They are as follows:

(1) Rule 15(2)(b) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Tribunal Rules”) provides that we may exclude evidence which has not been provided in accordance with the Tribunal’s directions. That discretion has to be exercised “fairly and justly”, and the approach in *Martland* is, as Mx Lunt says, relevant to its exercise.

(2) Mx Lunt is also correct that the breach is serious and significant. In considering whether there was a good reason for the breach, we agree that the Eyres could have contacted Mr Tolmie-Thomson well before Friday 10 March 2025. Mr Sykes was instructed in January; the other new witness statements were served at the beginning of February, and we make the reasonable inference that Mr Jones was contacted at the same time. The lack of a response should have caused the Eyres to consider other possible witnesses well before contact was made with Mr Tolmie-Thomson. We thus agree with Mx Lunt that there is no good reason why this witness statement could not have been filed and served a month earlier: it would still have been late, but not so egregiously late.

(3) We then considered all relevant circumstances, including those in (2) above, and also the following:

(a) The evidence was relevant, and spoke to key issues in dispute, namely the marketing and/or sale of Burnsall Street and the Holland Park House. Its exclusion would prejudice the Eyres.

(b) The witness statement was short, and Mr Tolmie-Thomson’s oral evidence could be accommodated within the existing timetable.

(c) The start time for the next day’s hearing could be delayed to allow Mx Lunt time to consider their cross-examination of Mr Tolmie-Thomson.

(d) A different tribunal panel had been listed to hear the original hearing in 2022, so we had no first-hand knowledge of what had happened at that time, and Mr Sykes was also not present. We decided we had insufficient information to support a finding that the Eyres had a pattern of producing surprises at the hearing, so as to “wrong-foot” HMRC, and we have not taken this into account in making our decision.

14. In weighing and balancing those factors, we gave significant weight both to the Eyres’ failure to comply with the directions, and to the prejudice which would be caused to them by the exclusion of this evidence. Having taken into account the other factors on both sides of the scales, we decided by a narrow margin to admit Mr Tolmie-Thomson’s statement.

#### **EVIDENCE**

15. The evidence consisted of documents and witness evidence.

#### **The documents**

16. We were provided with two bundles of documents, containing around 1,600 pages (“the Bundle”). They included:

(1) correspondence between the parties, and between the parties and the Tribunal;

(2) correspondence and other documents about Burnsall Street and the Holland Park House;

(3) documentation about loans to Mr and Mrs Eyre secured on Burnsall Street and the Holland Park House; and

(4) Companies House documentation about companies set up by Mr and Mrs Eyre.

17. At 2 pm on the final day of the hearing, Mr Sykes said he had been instructed that a letter in the Bundle should not be relied on. This had been sent on 10 January 2020 by Grant Thornton LLP (“Grant Thornton”) to Mr Rolls, the HMRC case officer who had issued the closure notices under appeal. Mr Sykes handed up an email dated 20 January 2020 from Saffery Champness LLP (now Saffery), the Eyre’s current accountant, to the Eyres. It began (his emphasis):

“Dear Ray and Diana

I have spoken with HMRC today and Mr Rolls has agreed to delay sending the file for review pending further representations from us. Mr Rolls did say that he was confused as to who was leading this enquiry on your behalf and I explained that...as the CGT enquiry has developed you and Diana would now like us to undertake a complete review of the position.

I added that GT [Grant Thornton] had sent you the draft response to HMRC at 4.50pm on the day it was to be submitted. Mr Rolls commented that he had the GT letter and **noted that it had not been approved by you.**”

18. Mx Lunt had been unaware of the 20 January email until it was provided that morning, and although contact had been made with Mr Rolls, he had been unable to check his files.

19. Plainly, this type of issue should have been resolved at the time the document lists were exchanged and not left to the final day of a four day hearing. However, we were able to decide the appeal without relying on the Grant Thornton letter dated 10 January 2020 and we make no further reference to it in this decision.

### **Witness evidence**

20. There were six witnesses: Mr and Mrs Eyre, their youngest daughter Ms Sophie Eyre (“Sophie”), and three individuals who had been involved with the development and/or sale of Burnsall Street.

(1) Mr Eyre provided three witness statements, gave evidence-in-chief led by Mr Sykes, was cross-examined by Mx Lunt, answered questions from the Tribunal and was re-examined by Mr Sykes.

(2) Mrs Eyre provided two witness statements, gave evidence-in-chief led by Mr Sykes, was cross-examined by Mx Lunt, answered questions from the Tribunal and was re-examined by Mr Sykes.

(3) Sophie provided a witness statement, gave evidence-in-chief led by Mr Sykes, was cross-examined by Mx Lunt, and answered a question from the Tribunal.

(4) Mr Andrew Dunn is the Chief Executive of Finchatton, a property development business. He provided a witness statement, was cross-examined by Mx Lunt, answered questions from the Tribunal and was re-examined by Mr Sykes.

(5) Mr Charles McDowell is a property agent who runs his own company; he was involved in both the purchase and the sale of Burnsall Street. He provided a witness statements, gave evidence-in-chief led by Mr Sykes, was cross-examined by Mx Lunt and re-examined by Mr Sykes.

(6) As already explained, Mr Tolmie-Thomson is an estate agent; at the relevant time he worked for Knight Frank LLP (“Knight Frank”); he too was involved in the sale of

Burnsall Street. He provided a witness statement, was cross-examined by Mx Lunt, answered questions from the Tribunal and was re-examined by Mr Sykes.

### **Witness credibility**

21. Mx Lunt asked the Tribunal to place significant weight on the guidance given by Leggatt LJ in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) (“*Gestmin*”). Leggatt J (as he then was), first referred to research which showed that “memories are fluid and malleable, being constantly rewritten whenever they are retrieved”, and then said:

“[18] Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs....

[19] The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events...

[20] Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial...The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

[21] ...

[22] In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.”

22. The recommendation at [22] above has been widely followed by Courts and Tribunals in subsequent cases. However, in *Kogan v Martin & Ors* [2019] EWCA Civ 1645 at [88], Floyd LJ, giving the judgment of the Court, made it clear that Leggatt J’s statements in *Gestmin* were not an “admonition” against placing any reliance at all on the recollections of witnesses, and that:

“... a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon *all* of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party’s sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence.”

23. In *Tui v Griffiths* [2023] UKSC 48, Lord Hodge, giving the only judgment with which the other members of the Court agreed, said at [53] that the general rule was that:

“any matter on which it was proposed to contradict a witness must normally be put to that witness so that the witness may have an opportunity of explaining the contradiction and that a failure to do so may be held to be an implied acceptance of the evidence,”

24. He explained at [70(iv)] that:

“Maintaining the fairness of the trial includes fairness to the witness whose evidence is being impugned, whether on the basis of dishonesty, inaccuracy or other inadequacy.”

25. In assessing the evidence, we have sought to follow all of the above guidance. Overall, we found the witnesses to be credible, other than that we agreed with Mx Lunt that Mr and Mrs Eyre's memory about the marketing of the Holland Park House was unreliable, see §108ff. There were also some inconsistencies between Mr Tomlie-Thomson's evidence about the marketing of Burnsall Street and that given by other witnesses. We preferred the latter, because their accounts were consistent with each other and with the documents. We agreed with Mr Sykes that this inconsistency in Mr Tomlie-Thomson's evidence was unsurprising given the passage of time, and did not mean that his evidence overall could not be relied upon.

#### **FINDINGS OF FACT**

26. On the basis of the evidence summarised above, and taking into account our findings on reliability, we make the following findings of fact. We make further findings later in this decision notice, and where we do so, our findings are identified as such.

#### **The Eyres**

27. Mr and Mrs Eyre moved to the UK in December 1992. Mr Eyre is the owner and managing director of Montrose Global LLP ("Montrose"), an aircraft leasing company. Before 2009 he had run essentially the same business in partnership with Bank of America, and he took over the name and the whole of the business in 2009.

28. The Eyres have three children, the eldest was born in 1990, the second in 1992 and Sophie in 1997. At the relevant time, Mr and Mrs Eyre both travelled a lot: Mr Eyre was running a global business, while Mrs Eyre made frequent and regular visits to see her mother, who lived in Singapore and was in poor health.

#### **Properties before Burnsall Street**

29. In December 1993, Mr and Mrs Eyre bought a house in Portland Road, London for £775,000. They spent about £300,000 on extensive renovations, some carried out before they moved into the property in March 1994. Mr and Mrs Eyre sold that house five years later, in July 1998, for £1.5m.

30. In March 1998, about three months before they sold Portland Road, Mr and Mrs Eyre bought a house in Notting Hill for £2.5m. It had been divided up into five flats and bedsits, and they spent approximately £2m converting it back into a single family home. While the building works were going on, they lived for about eighteen months in rented accommodation. They sold the house in July 2004 for £5.35m.

31. A year before the Eyres sold the Notting Hill property, they purchased the Holland Park House. It was in a very poor state of repair, with dry rot and damp rot; a tree growing through the brickwork and squatters in occupation. The Eyres had essentially to rebuild the house behind the façade.

32. When they sold the Notting Hill property, the Eyres lived for a time in rental accommodation because the Holland Park House was not ready for occupation. After spending about £3m rebuilding and renovating, the Holland Park House had six bedrooms and a total floor space of some 9,800 square feet. Its furnishing and décor was bespoke rather than consisting of items moved from previous homes.

33. In addition to these London properties, in 1996 Mr and Mrs Eyre purchased a country house in Sussex, renovated it and sold it after six years at a profit; they also renovated a house in Italy and they owned a flat in Singapore. In 2009 the Eyres purchased another country house, called the Old Rectory. This too required extensive renovation, including a new roof; this cost around £5m. During the relevant period, Mr and Mrs Eyre spent weekends at the Old Rectory; during school holidays they stayed there for longer periods.

### **Considering a change**

34. By 2009, Mr and Mrs Eyre began to think about changing their property arrangements to take into account the fact that their children would soon be leaving for university: their eldest child was in his last year of school, and the middle child was two years behind him. Following the financial crash, Mr Eyre was also concerned about the financial position of Montrose, which he had just established following the ending of the partnership with Bank of America.

35. Mr and Mrs Eyre considered a number of properties, and became particularly interested in two portfolios of flats which were being sold at a discount because the seller was in financial difficulties. They planned to refurbish three of the flats and give one to each of their children, and combine two flats into one for themselves. They thought they could interest one or more friends into purchasing the remaining two flats.

36. Having taken legal advice, they set up Limited Liability Partnerships to hold the flats. However, on further investigation, the Eyres identified significant problems with the current financing and holding structures of the flats, and decided not to proceed.

### **Improvements to the Holland Park House**

37. In July 2009, the Eyres commissioned a business called Thorp Design to carry out work on the Holland Park House. In reliance on contemporaneous minutes of a meeting between Mr and Mrs Eyre and Thorp Design, we find that the purpose of those works was to create “an overall better finish throughout the house” so as to “improve the house significantly to prospective purchasers”. A cashflow forecast, also contemporaneous, shows that the project was expected to finish in March 2010. The original budget was £256k excluding VAT, but the final cost was around double that.

### **Whether the Holland Park House was on the market before May 2010**

38. In August 2008, Mr Jones of Knight Frank emailed the Eyres, saying they had “identified a very good potential buyer for your house”. Mr Jones subsequently moved to Carter Jonas, and in May 2009, visited the Holland Park House to provide an informal written valuation on behalf of that firm. On 19 May 2009, Mr Jones told the Eyres that the Holland Park House was likely to fetch between £35m and £40m. On 23 September 2009, he emailed Mr Eyre saying “I have a buyer who is prepared to bid up to £40m for [the Holland Park House] at the moment”. In his second witness statement, Mr Eyre referred to Mr Jones’s emails about selling the Holland Park House and said “these approaches were a little early for us to take forward”.

39. In May 2010, Mr Eyre had a meeting with Mr Redfern of HSBC Private Bank (UK) Ltd (“HSBC”), after which Mr Redfern recorded the following information about the Holland Park House:

“We rely on a Savills PV of £20m (1/08) albeit we do have a copy of a letter from Carter Jonas to the Eyre's dated May 09 suggesting a guide price of between £35,000,000 and £40,000,000 if the property was to be marketed for sale. They recently received an unsolicited offer of £42m albeit only really want to sell when they have something to move to and ideally when their youngest daughter has left home / started Uni in Sep 2011...”

40. Taking into account Mr Eyre’s own evidence and the contemporaneous email from Mr Redfern, we find as a fact that the Holland Park House was not on the market in the period between 2008 and May 2010. We make findings of fact about subsequent periods later in this decision.

## **Buying Burnsall Street**

41. Around April 2010, Mr and Mrs Eyre went to see Burnsall Street, a two-storey property in Chelsea with a basement, covering a total of 6,468 square feet. It was advertised at £12.6m, but had been on the market for over a year. Mr Eyre considered it had potential, but Mrs Eyre thought it was “hideous”, although after Mr Eyre said she would have a free hand in its restoration and refurbishment, she agreed they should make an offer.

42. However, purchasing Burnsall Street would require extra finance. In May 2010, Mr Eyre discussed the position with Mr Redfern of HSBC, and he referred the Eyres’ need for funding to the bank’s credit department. On 24 May 2010, Mr Redfern emailed Mr Eyre setting out what he had said to that department:

“You'll recall that the Eyre's intention is to trade down from their impressive [Holland Park House] at some stage over the next 12-36 months. We have £8,430,000 out against it and have an additional line of US \$5,000,000 agreed as yet undrawn - expected to be drawn by 30 June 2010...They have seen something in Chelsea at £11m which would require approx £3m spent on it. Works would take 9/12 months and they would envisage putting [the Holland Park House] on the market this time next year. He wants to know our appetite for providing bridging finance...”

43. Mr Redfern subsequently indicated that HSBC would provide financing, and Mr and Mrs Eyre made an offer of £9.75m for Burnsall Street, which was accepted; Mr McDowell acted for the sellers in the transaction. On 22 June 2010, contracts were exchanged. On 1 July 2020, HSBC offered to provide Mr and Mrs Eyre with a loan facility of £10m, secured on both Burnsall Street and the Holland Park House. Under the heading “cost of repaying the capital”, the offer said:

“You will still owe £10,000,000 at the end of the loan term. You have indicated that the capital element of this loan facility will be repaid in full from personal resources or the proceeds of sale of [the Holland Park House].”

44. That agreement was renewed on an annual basis, and the same wording was repeated each year until July 2014 when the final sentence was replaced by the following:

“You have indicated that the capital element of this loan facility will be repaid in full from the sale of business assets.”

45. Immediately after exchange, the Eyres met with a number of architects and designers to explore how to renovate the property. Mr Edward Thompson of Strutt and Parker introduced the Eyres to Mr Dunn of Finchatton, a specialist property development business at the top end of the market. Mr Dunn suggested that the Eyres demolish Burnsall Street and replace it with a very modern house, over four floors, including a basement. Finchatton’s calculation was that if the Eyres obtained planning permission for demolition and a complete rebuild, this would create a property of over some 8,000 square feet which would be worth around £18m. The Eyres were sceptical that Finchatton would be able to obtain the necessary planning permission, with Mrs Eyre describing it as an “audacious” idea, but they agreed that Mr Dunn should make the relevant application on their behalf.

46. By late July 2010 matters had progressed to the extent that Finchatton were seeking a non-refundable commitment fee of £15,000 for “developing the concept”; they also suggested that the Eyres pay fees of £110,000 for architectural design work, £100,000 for project management and £50,000 for interior design. However, the parties instead negotiated the Development Funding and Management Agreement (“the DFMA”), see further below.

47. Had Finchatton not succeeded in obtaining planning permission, the Eyres would have renovated the existing structure just as they had done with previous properties: as Mrs Eyre said, they would have “ripped out” what was not to their taste, installed new kitchens and bathrooms and made other changes. That this was their original intention was also evidenced by Mr Redfern’s email, set out above, in which he referred to the works on the property being expected to take between 9-12 months.

48. Completion took place on 15 September 2010, and on 12 November 2010, Mr Dunn emailed the Eyres to say:

“demolition of the existing building is agreed in principle; the poor build quality and design of the existing building are the reasons backed by [the Council] to take it down...We have a final meeting schedule for 29th November midday to show our worked up design, after which we can receive a written response.”

### **The DFMA**

49. The DFMA was entered into between “the Client”, being the Eyres, and “the Development Manager”, being Finchatton. It was signed on 12 November 2010, but was effective from 15 September 2010. The second of two recitals said:

“The Client and the Development Manager wish to enter into an agreement with one another for the purposes of the Development.”

50. The “Development” was defined as:

“The full re-configuration and redevelopment of the Property to include the potential installation of an additional floor, full basement excavation, extensive structural work and full interior re-design in accordance with the Planning Permission and the Approved Plans.”

51. Clause 6 was headed “valuation” and included the following provisions:

“6.1.1 On the earlier of the date of termination of the Agreement under clause 18; and

6.1.2 the date the Client confirms in writing to the Development Manager that it does not wish to sell the Development,

the Client shall procure that the Valuers are each instructed to issue valuations for the market value of the Property with vacant possession at the date of valuation on the basis of the state and condition of the Property at the date the valuation is carried out...”

52. The “Valuers” were defined as “Knight Frank, Savills and Charles McDowell Property Consultants”.

53. By Clause 7.1.1, Finchatton was required to contribute £1m to the Development, and by Clause 7.15 was entitled to a “priority return” of 15% on that investment. Clause 7.5 read:

“The DM [sic] Funding and Priority Return shall be repayable on the earlier of the following:

7.5.1 out of the proceeds of sale following the sale of the Development...;

7.5.2 ...

7.5.3...the Client confirming in writing to the Development Manager following Practical Completion that it does not wish to sell the Property.

54. Clause 8.3 provided that “the Development Manager shall be entitled to share in the profits of the Development in accordance with Part C of Schedule 2”. That Part was headed “Profit Share” and read:

“1. For the purposes of calculating the profit share due to the Development Manager:

‘Development Profit’ means profit attributable to the Development using the Formula  $A - B$  where:-

A = the total sale price achieved on a sale of the Property or (in the event that the Client confirms it does not wish to sell the Property...) the Valuation Price

B = the total of the Development Costs and the Priority Return

2. The Development Manager shall be entitled to receive a share equal to the Relevant Priority Return of any Development Profit within 5 Working Days of the earlier of:

a) the determination of the Valuation Price; and

b) the sale of the Property.”

55. Clause 10 was headed “Development Manager’s obligations”, and included at 10.2.6 that Finchatton would “in relation to the Development, adhere to, comply with and diligently pursue and give effect to the Project Objectives”. Those objectives were defined as “the objectives of the parties as set out in Schedule 4”, and included the following:

“To hold, promote and manage the Development in order to maximise profits from sales of the Property.”

“The Development will be managed in accordance with the principles of good estate management in order to optimise the total returns therefrom.”

56. Clause 16 was headed “Sales” and provided as follows:

“16.1 The Development Manager will use all reasonable endeavours to procure the satisfaction of the Sales Objective as soon as reasonably practicable and in so doing will comply with the sales strategy produced in accordance with Schedule 1 (unless the Client confirms in writing to the Client that it no longer wishes to sell the Property).

16.2 When either party receives or becomes aware of an offer for the purchase of the Property it shall immediately inform the other party of the details of the offer and the parties shall consult together to decide whether or not to accept the offer.

16.3 The decision whether or not to accept any offer for the purchase of the Property (whether made before or after completion of the Development) shall be taken jointly by the parties, each acting reasonably, provided that:

16.3.1...neither party shall be entitled to refuse to accept an offer on financial grounds if the amount of the offer exceeds 95 per cent of the sum which the Sales Agent reasonably advises is the fair open market value of the Property;...”

57. Schedule 1, para 7 was headed “marketing and sale” and included Finchatton’s obligations to recommend a sales agent; to report to the Client the agent’s recommendation “as to the price to be asked for the Development”; to consult with the Client as to the terms to be agreed with a prospective buyer, and “generally to monitor and report on the progress of the marketing campaign in relation to the achievement of the sale of the Property”.

58. The DFMA was essentially a standard form contract, albeit with some minor amendments by lawyers appointed by the Eyres. Mr Dunn explained that:

“this was a standard agreement for us as our business is that of developers and we enter into joint ventures with individuals for a share in any profits. This is different to a straightforward management agreement as we believe that our approach at Finchatton adds significant value to a property and we seek appropriate reward as if we had bought and developed the property ourselves which is what we often do. That is why the contract provides for a profit share and a sale with the option to buy. This mechanism allows us to benefit from the upside in the work.”

59. Mr Eyre said that the DFMA served both parties’ interests, explaining:

“Once signed, Finchatton then knew that we would not go elsewhere for the project after they had done the hard work of obtaining planning permission and we, by offering them a substantial return, hoped to secure their continuing enthusiasm and commitment through to the end of the work. It is commonplace in my business world to expect those with whom one is doing business to ‘have some skin in the game’. The agreement therefore provided that Finchatton would contribute up to £1,000,000 to the project (Clause 7.1.1) and would share in the increase in value of the property,”

60. As set out above, the DFMA provided that if the Eyres confirmed in writing to Finchatton that they did not wish to sell Burnsall Street:

- (1) a valuation of that property would be carried out (Clause 6.1.2);
- (2) Finchatton’s £1m would be paid by the Eyres along with its 15% “priority return” (Clause 7.5); and
- (3) Finchatton would be paid its Profit Share based on the valuation (Sch 2, Part C).

61. Mr and Mrs Eyre did not inform Finchatton in writing at any time that they did not wish to sell Burnsall Street, so those provisions were not activated.

### **Development of Burnsall Street**

62. In September 2010, Finchatton appointed an architect, Liftshutz Davidson Sandilands (“LDS”); in November 2010, LDS met with the Council, and in January 2011 made a presentation to its architectural appraisal panel. A detailed planning application was then submitted, to which some objections were lodged by neighbours.

63. In February 2011, Mr Eyre suggested to Finchatton that the height of the new building be increased as this would add further value to the property. Mr Dunn responded by saying that this would delay Finchatton’s recovery of their £1m investment, and he asked Mr Eyre for a second legal charge on the Holland Park House, adding “we have only recently met each other” and that £1m to him and his company was “a massive amount of money”.

64. Mr Eyre replied the same day, saying “we do not need your capital for this project but saw your investment as an additional incentive and potential return for you”, but that if Mr Dunn remained uncomfortable, the parties could “go back to a more conventional arrangement” instead of that set out in the DFMA. Mr Dunn did not press the matter and the DFMA continued in force.

65. On 20 July 2011, the planning application was approved by the Council. The new building was described as “three storey single family dwelling with extension of basement level”.

## **The involvement of the Eyres in the design**

66. There was extensive witness evidence about the involvement of Mr and Mrs Eyre in the design and fitting out of Burnsall Street, and about the nature and quality of the materials used; none of that evidence was challenged, and it was consistent with contemporaneous documents in the form of emails in relation to some of the expenditure, particularly on art work and gym equipment.

67. Mrs Eyre explained the position as follows:

“...once that [planning] permission was granted in July 2011, I started to throw myself into the detail of the project...I was able to work well with the team of Finchatton and the architects Lifschutz Davidson Sandilands. We put together a design for the use of the space, which was carefully tailored to our lives. This included very personalised areas. We created an entire floor for our own use at the top of the building which comprised our master bedroom, bathroom, His and Hers dressing rooms, study and private sitting room...The level of detail that we went into included personalised dressing rooms with features such as tie racks and belt drawers exactly as Ray wanted them, dividers, sock drawers, heights of wardrobes for my long evening dresses. All materials such as marble for the bathroom, sanitary ware and fittings, wood flooring, wall finishes were selected by me in conjunction with the interior design team at Finchatton. This was all done to a very high level of specification. For my kitchen I chose Gaggenau and Miele commercial appliances and I even went to Gaggenau for one-on-one Instruction on how to use them.”

68. The fitting out was also personalised to suit Mr Eyre, as Mrs Eyre explained:

“The marble I choose for the swimming pool and gym area was unbelievably expensive, but I loved it! There is no way I would have picked that if we had been planning to sell and move on. Ray wanted the pool table in the games room to be covered with grey (rather than a traditional green or blue) felt cloth, so that was what we did. The wine cellar, which was very important to Ray, was bespoke so that he could showcase his collection of unopened cases of Chateau Montrose and we had a wine barrel shipped over from our vineyard in France. The cigar humidor was personalised with his initials...Ray bought one of the first BMW i3 electric cars in the country and so we installed in the garage a dedicated BMW charger, which only worked with the i3 model.”

69. Mr Eyre’s personal trainer visited Burnsall Street and advised Mr Eyre which equipment to install, so he could continue his personalised exercise programme. Mr Eyre has some mobility difficulties, and the plan for the property also included a lift which would enable him to move easily between the top floor penthouse suite and the rest of the building. A car stacker was installed in the garage at his request, and this allowed him to park some of his classic cars at the property. Each child had a suite of three rooms including a bedroom and a bathroom, and picked “their own colour schemes and decorative finishes”. Both the Eyres visited galleries and commissioned works of art; these were co-ordinated with the design of the rest of the property. The Eyres also spent over £150,000 designing the small garden, on which Mrs Eyre worked with a famous Italian designer. Both Mr and Mrs Eyre’s evidence was that they “loved” the finished house.

70. Mr Dunn contrasted the role of the Eyres in the development with that of other Finchatton clients who were “acting as investors”. He said that “during the development of these types of properties on a similar kind of contract I have done I have never had this kind of involvement from clients since or before”, adding that some of the changes required by the

Eyres “involved expenditure which Finchatton would not normally have incurred as they added time and cost and had little or no impact on the property value” such as the gym and the wine cellar. Mr Dunn also observed that dealing with the Eyres involved “endless meetings” because of their extensive involvement in the fitting out of the property.

### **Moving into Burnsall Street**

71. On 9 July 2013, the Council issued a certificate of practical completion for Burnsall Street; this stated that only “remedial works” remained outstanding, as set out on an attached “snagging list”. Mr Eyre’s unchallenged evidence was that, as at that date, the top floor suite was completed, as were two bedrooms; there were also showers and a functioning kitchen in the basement, but builders were still going in and out.

72. The Eyres moved into Burnsall Street the same day, using a van to transport their personal effects from the Holland Park House; they left the furniture behind. The Eyres also took with them Sophie’s personal possessions, as she was on a course overseas at the time; the two older children were living elsewhere.

73. Also on 9 July 2013, Mr Andy Duncan of Fitzgerald and Law, an accounting firm, emailed Mr and Mrs Eyre saying “please find attached a copy of the PPR election in respect of your new residence of 37 Burnsall Street” and asking them to sign and return that nomination so he could send it to HMRC. It was dated with effect from 13 July 2013. HMRC received the nomination on 29 July 2013 and acknowledged receipt.

74. Mr and Mrs Eyre informed the local Council that they were residing in the property, and their period of liability for council tax began on 1 July 2013. A letter dated 4 March 2014 from the Council’s electoral registration officer confirmed that they were both registered to vote at the Burnsall Street address.

75. On 15 July 2013, Mr Dunn informed the Eyres that the utilities for Burnsall Street would be put into their name, although this did not happen until the following year. That delay occurred because the builders were still present and they had their own contracts with the utilities companies.

76. On 30 July 2013, a postal redirection was set up as between the Holland Park House and Burnsall Street, which took effect from 5 August 2013. At some point during August, Sophie returned to the UK. She gave unchallenged evidence that she lived in Burnsall Street as her home; this is supported by the address on her SAT application dated 25 January 2014.

77. In October 2013, various items of gym equipment were billed to Mr Eyre at the Burnsall Street address, as was an invoice for the purchase of shares. At some subsequent point, Mr Eyres moved his bottles of “Chateau Montrose” wine totalling 2,000 bottles to Burnsall Street from the Holland Park House and the Old Rectory. In November 2013, the Eyres held a thanksgiving party at Burnsall Street and the following year celebrated Chinese New Year in the property; from February 2014 bank statements were addressed there and in May 2014, an ambulance was called to the house because of a medical issue affecting a family member. From September 2013, Sophie commuted from Burnsall Street to her school and back; Mrs Eyre returned there after visiting her mother, and Mr Eyre travelled from Burnsall Street on business.

### **The Holland Park House and finalising the development**

78. With effect from 1 July 2013, so around a week before the Eyres moved into Burnsall Street, they let the Holland Park House under an assured shorthold tenancy to a couple who were already known to the Eyres; the tenancy was for a nominal £1,100, albeit that the Eyres also had the use of the tenants’ Paris flat for the duration. The tenancy was subsequently extended until June 2014.

79. For a total of approximately 18 days during September and October 2013, Mr and Mrs Eyre and Sophie moved from Burnsall Street into serviced accommodation in Queens Gate; this occurred (a) when the nature of the work being carried out at Burnsall Street required the builders to cut off the electricity and gas, and (b) when the swimming pool was installed, because this involved the testing of multiple systems within the property.

80. We find that from 9 July 2013 to June 2014, the Eyres did not stay or have the right to stay at the Holland Park House. Had that been otherwise, it would have been very surprising for them to spend nearly three weeks in serviced accommodation at considerable cost.

81. In January 2014, Burnsall Street was signed off as formally complete. The finished property covered 10,526 square feet; it had six bedrooms, six bathrooms, a swimming pool and sauna, a gym, a wine cellar, a media room, two kitchens and a utility room.

### **The Eyre's financial position**

82. The Eyre's financial position at the beginning of 2014 was as follows:

- (1) they owned two very expensive London houses, Burnsall Street and the Holland Park House, as well as the Old Rectory and the overseas properties;
- (2) the Montrose business was not generating enough cash to service the Eyres' overall debt, and Mr Eyre was under some pressure from HSBC, although he had enough financial resources to manage for around two years without selling either property; but
- (3) if the equity in one of the London properties were released, it could be invested in Montrose, where it was likely to generate a very good return, particularly compared to two residential properties producing little or no income.

### **The Brochure**

83. Once the completion certificate had been issued for Burnsall Street, Mr Dunn was keen for Finchatton to be paid, and he pressed the Eyres for obtain a formal valuation of the property. They agreed that Knight Frank would be instructed and a brochure be prepared.

84. On 15 May 2014, Mr Dunn emailed the Eyres as follows:

“Very good to see you this morning and I look forward to your thoughts on how you would like to proceed.

I had a sit down with Jiin [who worked for Finchatton] this morning post our meeting to ascertain what we feel we need to buy to set the house in its best possible light with the minimum amount of cost. She has put together the attached. Please can you review and confirm if you are in agreement with this. I do think this is a really important part of the sales process. I have attached a couple of precious [previous] brochures that we styled to show you what level we would prepare the house to.”

85. Mrs Eyre said that Finchatton subsequently added “a few accessories” such as vases to the property, prior to photo shoots during which pictures were taken; these pictures were subsequently included in a glossy brochure about Burnsall Street (“the Brochure”).

86. The Brochure includes a page setting out the work which had been carried out, and the penultimate page states that:

“Burnsall House has been designed by Finchatton. Since 2001, the company has created exceptional homes at the finest addresses all over the world”.

87. On the same page, the “Agents” are given as Knight Frank and Mr McDowell, along with their contact details. At the bottom of the page are the words “Price on Application”. Under the heading “Important Notice”, the final page has this passage (emphases added):

“The seller and its appointed agents, Knight Frank and Charles McDowell, and Finchatton give notice that these particulars **are prepared for the guidance only of prospective buyers**. They are intended to give a fair overall description of the property but do not constitute part of an offer or contract. Any information contained herein is given in good faith but must not be relied upon as being a statement or representation of fact. Nothing in these particulars shall be deemed to be a statement that the property is in good working condition or otherwise nor that any services or facilities are in good working order. Any areas, measurements or distances referred to herein are approximate only. The text, photographs and layouts are for guidance only and are not necessarily comprehensive. Floorplan illustrations show the layout of the accommodation only. To view the architectural and structural items excluded on these accommodation layouts, please request the architectural plans from the marketing office. **Purchasers must satisfy themselves in relation to all the foregoing matters** by inspection or otherwise.”

88. Under that passage was the following annotation “BH /102014 96”. Mr Dunn was asked in re-examination about those letters and numbers, and he said it may have been a date but he didn’t know.

89. When Mr and Mrs Eyre submitted their CGT calculations on the sale of Burnsall Street, they each included a figure of £8,851, so a total of £17,702; this was part or all of the cost of the Brochure.

90. It was common ground that one of the purposes of the Brochure was to showcase the work carried out by Finchatton. The parties disagreed on whether the Brochure also had the purpose of marketing Burnsall Street to potential buyers. We have no hesitation in finding that it had that purpose: there is no other reasonable explanation for the inclusion of the words “price on application” or for the emboldened phrases in the passage set out above. We also find, in reliance on the email between Mr Dunn and the Eyres on 15 May 2014 and on the fact that the Knight Frank had provided a valuation of the property, that Mr and Mrs Eyre knew that the Brochure was being prepared for a sale of Burnsall Street.

### **The discreet approach**

91. In the letter of May 2009 from Mr Jones of Carter Jonas to which we referred at §38, he said:

“In any discussion with a potential buyer we would not necessarily give a guide price but would rather state that the house was not on the market but that the owners may sell for the right price. Buyers at this level often highly value a level of secrecy when buying a home and would greatly appreciate the idea of buying ‘off market’ for reasons of privacy and security.”

92. The consistent and unchallenged evidence from the witnesses was to similar effect: they said that, at the higher end of the London market, properties are usually sold via one or more well-networked estate agents, who may act as a buying agent or a selling agent. The agents communicate among themselves, as well as with their client base. Mr McDowell explained:

“During my time as a property agent, I have built up a network of other agents, property buyers and everyone in between and I operate in a completely different way from large Estate Agencies. Increasingly I do not

publicise the properties on which I am working – to do so would be counter-productive. Rather do I work covertly, sometimes simply offering friendly advice rather than insisting on formal instructions.”

93. Mr Tolmie-Thomson said:

“I have been involved in a large number of super prime property sales and the approach is almost always ‘rifle shot’, i.e. there is very little or no advertising in estate agent windows and potential buyers are identified via our network of global contacts and they are picked off individually and managed one to one. This off market approach ensures privacy, security and is the strategy to achieve the best result for buyers and sellers.”

### **The sale of Burnsall Street**

94. Mr Dunn accepted under cross-examination that he had “showed lots of people” around Burnsall Street and that these viewers included potential purchasers. He was vague about when the viewings began, saying “I don’t know the exact dates” but only that it was “when it [the property] was finished”. Mr and Mrs Eyre were plainly aware from these viewings that the sale process was underway.

95. Mr McDowell lived near Burnsall Street and was an old friend of the Eyres; he asked Mrs Eyre if she would show him the finished house and she agreed. Mr McDowell, Mr Dunn and Mr Tolmie-Thomson all mentioned Burnsall Street to another agent called Johnny Turnbull, because they knew that one of Mr Turnbull’s clients, a Mr and Mrs Clempson, had just sold a property for a significant sum and were interested in purchasing another.

96. Mr Tolmie-Thomson contacted the Eyres and arranged for Mr Turnbull to view Burnsall Street. Mr and Mrs Clempson subsequently visited the property, and subsequently made an offer of £25m. On 18 October 2014, the Eyres refused that offer; Mr Dunn informed Mr Tolmie-Thomson that “their bottom line is £27,750,000”. On 17 November 2014, the Eyres exchanged contracts with Mrs Clempson for £27,150,000 plus a further £600,000 for the furniture. The total paid by Mrs Clempson was thus identical to the figure of £27,750,000 put forward by the Eyres as their “bottom line”. Mrs Eyre’s unchallenged evidence was that the £600,000 paid for the furniture was less than it had cost.

97. The witnesses all agreed that this was a very high price. Mr Eyre said it was “wildly in excess of anything we might have contemplated at the outset”; Mrs Eyre described it as “an exceptionally good offer in a not particularly buoyant high-end market”; Mr Dunn said it was “well above anything we could have predicted as the project progressed” and Mr McDowell that it was “an extraordinarily high price”. That these assessments were correct can be seen from the fact that when Burnsall Street was sold again in February 2018, the price was £24.5m, around £3m less. Mrs Eyre was sad to sell the house.

98. The completion date was 2 February 2015, and after costs Mr and Mrs Eyres’ share was around £8.5m split between them, while Finchatton’s share was around £2.9m.

### **Improvements to the Holland Park House**

99. Meanwhile, in 2013 Mr Tolmie-Thomson had become aware that the Council were about to change their policy on allowing people to excavate large basements under their properties, and he alerted the Eyres to the fact that they might want to make an application before it was too late.

100. In June 2013, the month before the Eyres moved to Burnsall Street, they applied to the Council to renovate the Holland Park House. The application described the works as follows:

- (1) lowering the existing lower ground floor level to increase the floor to ceiling height in the family room, deepening and extension of the existing basement level to

accommodate a swimming pool, car parking area, media room, plant rooms, wine cellar, gym and games room.

(2) demolition of the existing swimming pool and garage structure and replacement with a new structure containing a family area and new garage.

(3) installation of a passenger lift in the existing house to serve all floors.

(4) demolition of the existing garden room and replacement with a new garden room.

101. The attached “Design and Access Statement” ended by saying that “the completed project would provide a family home with accommodation and leisure facilities to satisfy their varied lifestyles”.

102. Mrs Eyre gave unchallenged evidence that all these works were related to the creation of a new basement, because creating that basement required not only replacing the existing basement, but also digging up the garden, demolishing the garden room and connecting the basement to the main house. That evidence was not inconsistent with the details in the planning application and we accepted it.

103. The Eyres’ application was resubmitted in August 2013, and amended in September. On 1 October 2013 it was approved on condition that the works were carried out within three years. Nothing was done while the tenants were in residence. During a meeting with Mr Rolls and other HMRC officers on 8 December 2017, Mr and Mrs Eyre said that they had begun work around 18 months previously, so we find that it started in mid-2016. We were not taken to any documents showing when the work ended, but we find that it was finished by 2021, when the Eyres let the property (see further below). As a result of the redevelopment, the Holland Park House increased in size from 8,500 square feet to just under 14,000 square feet.

#### **The move back to the Holland Park House**

104. After the sale of Burnsall Street, the Eyres moved back to the Holland Park House. They took with them their personal effects and some of the artwork they had purchased. Mrs Eyre explained that the art was “personal to us, not just to fill up a wall”. Mr Eyre moved most of his wine to the Old Rectory and put the rest into storage.

#### **Covid and afterwards**

105. The Montrose aircraft leasing business was significantly affected by Covid, which brought in global restrictions on travel. The Eyres sold assets, including the Old Rectory, and increased their borrowing secured on the Holland Park House, including new financing provided by a lender which insisted (as a condition of the loan) that an estate agent be formally instructed to sell that property. On 22 June 2020, the Eyres instructed Knight Frank as sole agents.

106. No purchase offers were received, but in May 2021 the Eyres entered into a twelve-month tenancy agreement on an arm’s-length basis, and moved out to a rented mews house in Knightsbridge, taking only their personal possessions and leaving their furniture.

107. On 12 July 2021, a severe flash flood entered the basement of the Holland Park House; the tenants left and it took the Eyres significant time and money to repair the damage. In October 2022, the Eyres entered into a new sole agency agreement with Knight Frank to sell the Holland Park House.

#### **Whether the Holland Park House was on the market between 2011 and 2020**

108. Mr and Mrs Eyre’s evidence was that they began trying to sell the Holland Park House from the date they got planning permission for Burnsall Street, and that the property has

remained on the market ever since, other than when it was undergoing the substantial renovations described above.

109. Mr Eyre said they were “always pushing hard” for the property to be sold, and that by July 2014 they “had been trying for a long time to sell [the Holland Park House]”. Mrs Eyre said that “pushing hard” involved speaking more often to the agents, asking which buyers were around. They both recognised that it was “more likely to be an international purchaser”.

110. The Eyres’ evidence on this point was challenged by Mx Lunt. In re-examination, Mrs Eyre said she had “pushed” Mr McDowell, Mr Jones at Knight Frank, Mr Thomson at Strutt and Parker, as well as Savills and Property Vision to find a buyer for the Holland Park House.

111. Mx Lunt submitted that the Holland Park House was not on the market during this period. She relied on a passage from a letter dated 20 November 2020 sent by Saffery to Mr Rolls, which said (Mx Lunt’s emphasis):

“You have indicated that you consider that our client’s “main property during (the relevant) period was and still is [the Holland Park House], at no point was [the Holland Park House] put up for sale.” **Whilst we would agree that [the Holland Park House] has not been put up for sale** we would like to understand how being a ‘main property’ impacts on the interpretation of the legislation....”

112. Mx Lunt also relied on the lack of documentary evidence, saying that it “strains credulity” that there were no emails or other correspondence relating to matters such as viewings and access, and nothing to support the Eyres’ evidence that they had been “pushing” the agents to make a sale throughout this period. Mx Lunt pointed out that, by way of contrast, the Eyres had provided the email from Mr Jones of Knight Frank dated 2008 about an unsolicited offer; the valuation from Carter Jonas dated 19 May 2009 and a letter from Knight Frank in 2022 about selling the Holland Park House, which included terms and conditions. Mx Lunt also pointed out that Mr McDowell had given evidence that he confirmed terms by email, but no emails had been exhibited in relation to the Holland Park House, and that when asked if the Eyres had made regular contact with him, Mr Tolmie-Thomson had said “we would always try to make contact before we were contacted”.

113. Mr Sykes relied on the unchallenged witness evidence of Mr McDowell and Mr Tolmie-Thomson. Mr McDowell said “I have shown a few people, mainly dollar buyers, around [the Holland Park House]”. Mr Tolmie-Thomson said that in 2012, Knight Frank was working on the “rifle shot” approach to a potential sale of the Holland Park House, and he had showed it to potential buyers on a number of occasions before the Eyres moved to Burnsall Street, as well as “a few times” during the time when it was tenanted. Mr Tolmie-Thomson did not recall much interest after that period, but said “the property remained on our books”. Mr Sykes also pointed out that the tenancy agreement entered into in 2013 included a condition that the tenants would allow prospective purchasers to view the Holland Park House, and that this was consistent with Mr Tomlie-Thomson’s witness statement. He submitted that it was clear from the evidence that throughout this period the Holland Park House had been on the market in the discreet manner appropriate to such a high value property.

### **The Tribunal’s view**

114. We agree with Mx Lunt that if the Eyres were “pushing” the agents to sell the Holland Park House, it is not credible that there is not a single piece of documentary evidence to that effect between the Eyres and any of the five agents who were named by Mrs Eyre during re-examination. Mr McDowell’s statement that he had “shown a few people” around the property was imprecise as to timing, and could relate to 2020 or later. We find as a fact that

the Eyres were not “pushing” to sell the Holland Park House at any time until after Covid impacted the Montrose business in 2020.

115. That does not mean that the Holland Park House was not on the market during this period, albeit in the discreet fashion described earlier. We had conflicting evidence: on the one hand, the letter from Saffery dated 20 November 2020, and on the other, Mr Tolmie-Thomson’s evidence. The Eyres now say that the letter was wrong; the property was always on the market and that Mr Tolmie-Thompson is correct. Importantly, his evidence on this point was not challenged in cross-examination.

116. Taking into account the guidance given by the Supreme Court in *Tui*, we therefore find, in reliance on Mr Tolmie-Thompson’s evidence, that Knight Frank did have the Holland Park House on its books from the end of 2010, when the Council approved the planning permission for Burnsall Street, through to June 2020, when the Eyres instructed Knight Frank as sole agents, with the exception of the period when the basement and related works were taking place.

### **ISSUE 1: VENTURE IN THE NATURE OF A TRADE**

117. Income Tax Act 2007, s 989 sets out the definitions which apply for the purposes of that Act, and relevantly provides that

“‘trade’ includes any venture in the nature of trade”.

118. HMRC accepted that the Eyres had not entered into any other property trading transactions, but decided that the purchase and sale of Burnsall Street was a “venture in the nature of trade” because the Eyres’ “intention in purchasing and developing Burnsall Street was to realise a profit from the property”. The Eyres’ case was that it was not such a venture. The burden of proof was on the Eyres.

#### **THE CASE LAW**

119. In *Taylor v Good* (1974) 49 TC 277, Russell LJ gave the only judgment, with which Stamp and Orr LJ both agreed. He first considered a number of earlier judgments, before saying:

“All these cases, it seems to me, point strongly against the theory of law that a man who owns or buys without present intention to sell land is engaged in trade if he subsequently, not being himself a developer, merely takes steps to enhance the value of the property in the eyes of a developer who might wish to buy for development.”

120. He went on to say at p 155, having considered further authorities:

“where, as here, there is no question at all of absorption into a trade of dealing in land of lands previously acquired with no thought of dealing, in my judgment there is no ground at all for holding that activities such as those in the present case, designed only to enhance the value of the land in the market, are to be taken as pointing to, still less as establishing, an adventure in the nature of trade. Were the commissioners, on a remission to them, to decide otherwise, it seems to me they would be wrong in law.”

121. In *Simmons v IRC* [1980] STC 350 (“*Simmons*”), Lord Wilberforce said at p 352:

“Trading requires an intention to trade; normally the question to be asked is whether this intention existed at the time of the acquisition of the asset. Was it acquired with the intention of disposing of it at a profit, or was it acquired as a permanent investment? Often it is necessary to ask further questions: a permanent investment may be sold in order to acquire another investment thought to be more satisfactory; that does not involve an operation of trade,

whether the first investment is sold at a profit or at a loss. Intentions may be changed. What was first an investment may be put into the trading stock, and, I suppose, vice versa. If findings of this kind are to be made precision is required, since a shift of an asset from one category to another will involve changes in the company's accounts, and, possibly, a liability to tax...”

122. Mx Lunt relied in particular on the well-known “badges of trade” set out in *Marson v Morton* [1986] STC 463 by the Vice-Chancellor, Sir Nicholas Browne-Wilkinson, which are as follows:

- (1) Whether it is a single transaction, as “although a one off transaction is in law capable of being an adventure in the nature of trade, obviously the lack of repetition is a pointer which indicates there might not here be trade but something else”.
- (2) Whether the transaction in some way related to the trade which the taxpayer otherwise carries on.
- (3) The nature of the subject matter.
- (4) Whether the transaction was carried through in a way typical of the trade in a commodity of that nature.
- (5) The source of finance of the transaction.
- (6) Whether work was done on the item for the purposes of resale.
- (7) Whether the item purchased was resold in the same single lot as when it was bought, or whether it had been broken down into saleable lots.
- (8) The intentions as to resale at the time of purchase.
- (9) Whether the item either provided enjoyment for the purchaser (for example, a picture) or pride of possession or produce income pending resale. If it did, then that may indicate an intention to buy either for personal satisfaction or to invest income for yield, rather than to do a deal purely for the purpose of making a profit on the turn.

123. The Vice-Chancellor emphasised that this was:

“in no sense a comprehensive list of all relevant matters, nor is any one of them so far as I can see decisive in all cases. The most they can do is provide common sense guidance to the conclusion which is appropriate.”

124. He added:

“I believe that in order to reach a proper factual assessment in each case it is necessary to stand back, having looked at those matters, and look at the whole picture and ask the question--and for this purpose it is no bad thing.”

#### **THE PARTIES’ SUBMISSIONS IN OUTLINE**

125. In submitting that the acquisition and sale of Burnsall Street was not a “venture in the nature of trade”, Mr Sykes relied in particular on the contemporaneous evidence as to the Eyres’ intention to sell the Holland Park House, and on their personalisation of Burnsall Street.

126. HMRC’s case was that Burnsall Street was “never an asset which the Appellants wished to hold and was rather acquired to be resold”, and that the Eyres intended to “make a profit on the turn” following its redevelopment. In making those submissions, Mx Lunt relied in particular on the lack of evidence of intention to sell the Holland Park House; the terms of the DFMA, and the sale of Burnsall Street in accordance with the terms of that agreement.

127. It was not part of HMRC's case that the Eyres originally intended to make Burnsall Street their home, but subsequently changed their position either (a) when they applied for planning permission, or (b) when planning permission was granted. In any event, any submission that there was what is known as "supervening trading" would have had to overcome the very high hurdle set by the Court of Appeal's judgment in *Taylor v Good*.

#### **THE TRIBUNAL'S VIEW**

128. We decided that the Appellants are correct, and that there was no venture in the nature of trade. We first set out our reasons for agreeing with Mr Sykes, and then explain why, having considered each of the points made very clearly and comprehensively by Mx Lunt, we nevertheless do not agree with HMRC.

#### **The Eyres' intention on purchase**

129. We start from the position, accepted by HMRC, that the Eyres did not carry on a trade of dealing in property. It is clear from *Taylor v Good* that a person is not engaged in a venture in the nature of trade if he "owns or buys without present intention to sell". In *Simmons*, Lord Wilberforce said that the question to be asked is whether the intention to trade "existed at the time of the acquisition of the asset". It was common ground that the Eyres' intention was to be determined at the time contracts were exchanged for Burnsall Street and not on completion of the sale.

130. In making our findings on this issue, we relied on the contemporaneous documentation, while noting that Mr and Mrs Eyre's evidence was consistent with the position there set out.

131. The key item of evidence is Mr Redfern's note, dated 24 May 2010 (see §42), which followed his discussions with Mr Eyre. Mr Redfern there recorded that:

- (1) the Eyres' intention was to trade down from the Holland Park House at some stage over the next 12-36 months; and
- (2) the Eyres wanted to buy Burnsall Street and having refurbished it (which was expected to take between nine and twelve months) they "would envisage putting [the Holland Park House] on the market this time next year".

132. In reliance on that evidence, we thus find as facts that in May 2010 the Eyres intended to refurbish Burnsall Street, move into that house as their home, and sell the Holland Park House.

133. We further find that this remained the Eyres' intention on 22 June 2010, when contracts were exchanged. That finding is based on the loan documentation, dated 1 July 2010 (just over a week after exchange), which records that Mr Eyre had "indicated that the capital element of this loan facility will be repaid in full from personal resources or the proceeds of sale of [the Holland Park House]".

134. Had the Eyres planned, as HMRC say is the case, to "make a profit on the turn" by buying, refurbishing and selling Burnsall Street, Mr Eyre would have told Mr Redfern that this was the case. As the money to refurbish that property had been borrowed, the Eyres would have had no reason not to tell HSBC that, when the renovation was complete in a year or so, the house would be sold and the bank would then get its money back. The loan documentation would then have read something like this: "you have indicated that the capital element of this loan facility will be repaid in full from...the proceeds of sale of Burnsall Street".

135. That finding is also supported by the contemporaneous minutes of the meeting between the Eyres and Thorp Design, which took place in July 2009. Those minutes said that the works being carried out at the Holland Park House were to "improve the house significantly

to prospective purchasers”. In other words, the Eyres were planning to sell the Holland Park House, just as Mr Eyre subsequently told Mr Redfern was the case.

136. Mx Lunt pointed out that Burnsall Street was larger than the Holland Park House, and said this was inconsistent with their statements that they had bought the former in order to downsize. However, at the time of purchase, Burnsall Street *was* significantly smaller than the Holland Park House (at 6,468 square feet compared with 9,800 square feet). It was only after exchange of contracts that the idea of building an entirely new house was suggested by Mr Dunn and even then, it was originally anticipated that the new property would cover 8,000 square feet, see §45, which was still smaller than the Holland Park House. It was subsequent changes to the plans which extended the size of the property.

137. We therefore find as facts that at the time the Eyres acquired Burnsall Street:

- (1) they intended to downsize;
- (2) they intended to refurbish Burnsall Street and then move into that property as they had done with their earlier homes; and
- (3) they intended to sell the Holland Park House.

### **Personalisation, time and energy**

138. Mr Sykes also relied on the extent to which the Eyres personalised Burnsall Street and the amount of time they spent in making it suit their needs. That was, he said, entirely inconsistent with an intention to buy, develop and sell at a profit.

139. We agree. We have already made extensive findings of fact about the involvement of the Eyres in the development, including the following:

- (1) The Eyres required Finchatton to amend the development plans in ways which added time and cost but had little or no impact on the property’s value: for example, Mrs Eyre chose marble for the swimming pool and gym area which was “unbelievably expensive” and would not have been used had they been “planning to sell and move on”. More generally, Mrs Eyre selected the materials she “loved” regardless of cost, and even went to Gaggenau for one-on-one instruction on how to use the kitchen equipment. When the Eyres sold Burnsall Street, they made a loss on the furniture they left behind.
- (2) On leaving, the Eyres removed some of the artwork because they were attached to it: Mrs Eyre said it was “personal to us, not just to fill up a wall”. Had the art been selected only for the purpose of making Burnsall Street more saleable, those items too would have been left *in situ*.
- (3) The wine cellar at Burnsall Street was designed for Mr Eyre’s extensive wine collection, and he and his personal trainer selected the gym equipment. The car charger in the garage only worked with the model of electric car he had purchased. The artwork was commissioned. The children decided on the décor for their rooms and Mrs Eyre worked with an Italian designer to create the garden.
- (4) As Mr Dunn said, the way Mr and Mrs Eyre worked with Finchatton and the architects was unique in Mr Dunn’s experience; his other clients put up money to develop a property and then left it to Finchatton and his team of experts to carry it through.
- (5) The personalisation took a lot of time and energy: Mr Dunn spoke of “endless meetings”. Mr Eyre was running his own global business, and Mrs Eyre had family responsibilities including for her mother who was overseas and unwell. It is not

credible that the Eyres would have invested this much time and energy in Burnsall Street had they not been planning to live there as their home. Similarly, Mr Eyre would not have moved his wine collection consisting of 2000 bottles to Burnsall Street if he was planning to sell it soon after it was finished, as he then had to move it out again.

### **Factors relied on by HMRC**

140. HMRC relied on the terms of the DFMA, on the process for selling Burnsall Street, on the Eyres' continued ownership of the Holland Park House, and on the "badges of trade". We consider each in turn.

#### *The DFMA*

141. The difficulty with this part of HMRC's case is that, whatever its terms, the DFMA was effective from 15 September 2010, the date of completion. It was not in contemplation at the time the Eyres exchanged contracts, and HMRC rightly accepted that the property was acquired on exchange, not on completion. However, we have also considered the clauses on which HMRC placed reliance.

142. The DFMA included clauses which took effect if the Eyres informed Finchatton in writing that they wanted to remain in Burnsall Street; Mx Lunt placed a lot of weight on the fact that the Eyres never provided that confirmation. She submitted that had they always wanted to retain Burnsall Street as their home, they would have informed Finchatton in writing that this was their intention. However, when that point was put to Mr and Mrs Eyre in cross-examination, they said they had no reason to provide that confirmation unless or until there was an offer to purchase, because doing so would require them to pay Finchatton both the £1m and the profit share, see §60.

143. Mx Lunt said this was incorrect, because once an offer had been made it would be too late for the Eyres to exercise their option to retain the property rather than sell it. However, we agree with Mr Sykes that the contract allowed the Eyres to exercise the option at any time: they were only precluded from refusing an offer which was at 95% of the property's value if the refusal was made "on financial grounds", see Clause 16.3.1. Thus, the Eyres could always exercise the option to retain the property, both before and after a purchase offer if their reason for refusal was that they wanted to continue to live in the house.

144. Mx Lunt submitted that, in any event, the Eyres could not afford to exercise the option because they did not have the funds to pay Finchatton the amounts owed under the DFMA, and so would always have had to sell the property soon after it was completed. However, as Mr Sykes pointed out, (a) that point was not put to the Eyres in cross-examination, and (b) there was no evidence to that effect. Indeed, on the evidence we did have, we agree with Mr Sykes that it was very likely that the Eyres could have raised the £2.9m payable to Finchatton without having to sell either the Holland Park House or Burnsall Street.

145. Mx Lunt also placed particular emphasis on Schedule 4 of the DFMA, which said that one of the objectives of the parties was "to maximise profits from sales of the Property". However as Mr Sykes submitted, that sentence has to be read in context. The DFMA places the obligation of pursuing and giving effect to the objectives on Finchatton, not on the Eyres, see Clause 10.2.6; this is also reflected in the separate objective that the Development be "managed in accordance with the principles of good estate management in order to optimise the total returns therefrom".

146. Mr Sykes was also correct to emphasise that this was a standard contract, used by Finchatton for its development projects; at the end of each of those other projects, the property was sold and the profits split. Mx Lunt's position was that if the Eyres had never intended to sell the house, they would never have agreed to those standard terms, and they

would instead have amended the contract to reflect their intention. Under cross-examination the Eyres agreed with Mx Lunt that they *could* have made further changes in addition to the minor amendments made by their lawyers, but went on to say that there was no reason for them to do so. We agree. Their purpose was to work with Finchatton to develop Burnsall Street, and the DFMA which they signed allowed them the option to retain it on completion should they wish to do so.

#### *The sale of Burnsall Street*

147. It was also part of HMRC's case that the production of the Brochure showed that the Eyres, as well as Finchatton, intended to sell Burnsall Street. We have found as facts that both Mr and Mrs Eyre were aware that the Brochure was being prepared, and were also aware that one of its purposes was to market Burnsall Street.

148. Although we have already found that Burnsall Street was sold without reliance on the Brochure, we further find that:

(1) the process of its production shows that the Eyres were aware that Burnsall Street was to be offered for sale. Mr Dunn showed "lots of people" around Burnsall Street including potential purchasers, so Mr and Mrs Eyre were thus aware that the sale process was underway; and

(2) Mr and Mrs Eyre therefore knew that when a sufficiently high offer was received, they would have to decide whether or not to sell Burnsall Street.

149. However, it does not follow from either of those facts that the Eyres had a trading intention from inception. For the reasons already explained, that was not the case.

#### *The continued ownership of the Holland Park House*

150. HMRC also relied on the fact that the Eyres did not in fact sell the Holland Park House. However, we have found as facts that this property has been on the market since 2010, other than during the period when the basement and related works were being carried out, and that viewings did take place during that time.

#### *Marson v Morton*

151. Of the various "badges of trade" set out in *Marson v Morton*, Mx Lunt relied on the reference in the ninth badge to doing a deal "purely for the purposes of making a profit on the turn". Mx Lunt said there was nothing about the property's acquisition and disposal which indicated it was not a trading transaction; it had been bought and sold on the open market, had been funded in part by borrowings, and work had been carried out to enhance its value.

152. However, the description of the ninth "badge" begins by asking whether the item provided enjoyment for the purchaser or pride of possession, and if the answer to that question is yes, this may indicate an intention to buy for personal satisfaction rather than to do a deal purely for the purpose of making a profit on the turn. We have found as facts that the property provided enjoyment for the Eyres when they were living there: both Mr and Mrs Eyre said they "loved" it; Mrs Eyre was "sad to sell it"; they both took personal satisfaction in the quality of the refurbishment. The ninth "badge" therefore does not support HMRC's case.

153. Although the house was purchased on the open market and funded in part by borrowing, the same is true of almost all property acquisitions, so these factors are neutral. We have found as a fact that some of the work carried out on the property was personalised to suit the Eyres and so was not "for the purposes of resale". Other "badges" point in the same direction: the lack of repetition; the purchase being unrelated to Mr Eyre's aircraft leasing business, and the fact that the house was sold as a single lot and not divided up.

154. In any event, as the Vice-Chancellor said, the “badges” are not a checklist, but provide “common sense guidance”, and that “in order to reach a proper factual assessment in each case it is necessary to stand back...and look at the whole picture”. Having done so we find that this was not a trading transaction.

#### **CONCLUSION ON ISSUE ONE**

155. For the reasons set out above, we decide Issue 1 in favour of Mr and Mrs Eyre.

#### **ISSUE 2: CGT**

156. Issue 2 was whether Burnsall Street was Mr and Mrs Eyres’ PPR, as they contended, or whether it could not be a PPR because it was not their “main residence” as HMRC submitted was the case.

#### **THE LAW**

157. TCGA s 222(1) provides:

“This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in

(a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or

(b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.”

158. Section 222(5) reads:

“So far as it is necessary for the purposes of this section to determine which of 2 or more residences is an individual's main residence for any period—

(a) the individual may conclude that question by notice to an officer of the Board given within 2 years from the beginning of that period but subject to a right to vary that notice by a further notice to an officer of the Board as respects any period beginning not earlier than 2 years before the giving of the further notice,”

159. Section 223 includes the following provisions:

“(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 18 months of that period.

(2) Where subsection (1) above does not apply, a fraction of the gain shall not be a chargeable gain, and that fraction shall be

(a) the length of the part or parts of the period of ownership during which the dwelling-house or the part of the dwelling-house was the individual's only or main residence, but inclusive of the last 18 months of the period of ownership in any event, divided by

(b) the length of the period of ownership.”

160. We record that HMRC did not seek to rely on s 224(3), which provides that:

“Section 223 shall not apply in relation to a gain if the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house was made wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of

ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.”

161. In *Moore v Thompson* [1986] STC 170, Millett J (as he then was) said at p 176 that “... the Commissioners were alive to the fact that even occasional and short residence in a place can make that a residence; but the question was one of fact and degree”.

162. He revisited the same issue in *Goodwin v Curtis* (1998) 70 TC 476, where as Millet LJ he gave the only judgment with which Shiemann LJ and Sir Brian Neill both agreed. He approved the approach taken by the General Commissioners, who had held that there must be “some assumption of permanence, some degree of continuity, some expectation of continuity to turn mere occupation into residence”. He went on to consider the facts: the taxpayer, Mr Curtis, had purchased a property with nine bedrooms with a view to making it a home for him and his family. However, on the day the sale completed, he separated from his wife and family and moved into the farmhouse, which he had already put on the market. It was sold a month later to a third party. Mr Curtis claimed PPR on the sale.

163. Millett LJ found that “the farmhouse was where [Mr Curtis] lived; it was the only place where he lived”, but he continued by saying that “temporary occupation at an address does not make a man resident there”, adding:

“The question whether the occupation is sufficient to make him resident is one of fact and degree for the commissioners to decide. The substance of the commissioners’ finding taken as a whole, in my judgment, is that the nature, quality, length and circumstances of the taxpayer’s occupation of the farmhouse did not make his occupation qualify as residence.”

#### **SUBMISSIONS AND DISCUSSION**

164. Issue 1 required us to establish the Eyres’ intention when they *purchased* Burnsall Street, in other words, when they exchanged contracts to buy that property, which was of course before its demolition and renovation. Issue 2 is different: for Burnsall Street to be the Eyres’ PPR, what is relevant is their *occupation* of that property, which ran from 9 July 2013 to around 2 February 2015. We have to consider the “nature, quality, length and circumstances” of that occupation to see whether there was “some assumption of permanence, some degree of continuity, some expectation of continuity”.

#### **Mr Sykes’ submissions**

165. Mr Sykes said that it was obvious from the facts of the case that the nature, quality and circumstances of the Eyres’ occupation of Burnsall Street demonstrated that it was their residence. He relied in particular on facts set out at §72 to §77, which in summary include: moving personal possessions; registration for council tax; inclusion on the electoral roll; contracting for the supply of utilities; postal redirection from the Holland Park House; Sophie’s evidence as to her occupation of the property together with supporting documentation; the transfer of Mr Eyre’s wine to the property; various invoices and receipts addressed to the Eyres at Burnsall Street; the parties for thanksgiving and Chinese New Year, together with documentation showing that an ambulance was called to the property for a family member.

#### **Mx Lunt’s submissions**

166. Mx Lunt sought to rely on the following:

- (1) The fact that Mr and Mrs Eyre only moved personal effects into Burnsall Street, leaving their furniture etc behind; it was submitted that this showed the Eyres never intended to make that house their home.

(2) The short period between the end of the renovation and plans being made to sell the property, in that:

(a) the Eyres moved into Burnsall Street on 9 July 2013;

(b) the works were completed in January 2014 (so it could not reasonably have been sold before that); and

(c) in May 2014, only four months later, the Eyres were discussing the preparation of the Brochure with Finchatton.

(3) Mr and Mrs Eyre both travelled a lot: Mr Eyre for work and Mrs Eyre to visit her mother; the family also spent time at the Old Rectory, and from June 2014 the Holland Park House was available for use, as the works had not started on that property and the tenants had left. Thus, this was not a case where the taxpayers had nowhere else to live.

(4) When the Eyres submitted the planning application for Holland Park House in June 2013, before they moved into Burnsall Street the following month, they told the Council that “the completed project would provide a family home with accommodation and leisure facilities to satisfy their varied lifestyles”. Mx Lunt said this was a reference to the Holland Park House being the *Eyres’* family home, and the changes being designed to suit their lifestyles. In consequence, said Mx Lunt, the Eyres intended to return to the Holland Park House, and therefore did not have the necessary expectation of permanence or continuity such as to make Burnsall Street a residence.

#### **The Tribunal’s view**

167. We agree with Mr Sykes, for the reasons he gave, that the Eyres demonstrated the degree of permanence and continuity sufficient to turn “mere occupation into residence”.

168. In relation to the points made by Mx Lunt, we hold as follows (using the same order as set out above).

(1) Although it is true that the Eyres took only personal possessions with them when they moved into Burnsall Street, that house had been (or was shortly to be) entirely fitted out with furnishings and equipment. The Eyres thus did not need to move furniture from the Holland Park House to Burnsall Street. We also noted that when the Eyres let the Holland Park House to tenants in May 2021, they again left all their furniture behind, because it had been custom-made for that property.

(2) Although Mx Lunt was correct that the period from moving in to preparing the Brochure was relatively short, the period of occupation was eighteen months (July 2013 to early February 2015). In addition, as Millet J said in *Moore v Thompson*, even short residence can suffice. For the reasons given by Mr Sykes, we find that the quality of the Eyres’ occupation is such as to make it their residence.

(3) As to other places to live, it is true that the Eyres also spent time in the Old Rectory; that they travelled a lot, and that the tenants had left the Holland Park House before the Eyres sold Burnsall Street. But from July 2013 until February 2015, the Eyres based themselves at Burnsall Street: Sophie commuted from there to her school and back; Mrs Eyre returned there when she came back from visiting her mother and Mr Eyre travelled from Burnsall Street on business and returned there after each trip.

(4) The description used in the planning application does not assist. It does not say that the house will “provide *the* family *with a* home *which has* accommodation and leisure facilities to satisfy their varied lifestyles”; that wording would naturally be read as a reference to the Eyre family which put in the application. Instead the application

simply describes the renovations in generic terms, as creating a family home designed to suit the varied lifestyles of the occupants.

#### **CONCLUSION ON ISSUE 2**

169. For the reasons set out above, we find that from 9 July 2013, when the Eyres moved into Burnsall Street, until they moved out around the beginning of February 2014, the property was their “residence” within the meaning of TCGA s 223(1).

170. Although they had more than one residence during that time, they nominated Burnsall Street for CGT purposes from 13 July 2013, see §73. As a result, Burnsall Street was their main residence from that date until they moved out, and they are entitled to PPR.

#### **RIGHT TO APPLY**

171. As we recorded at §7, the parties jointly asked us not to decide whether, and if so how, the outcome of the *Lee* case changed the quantum of the tax payable by Mr and Mrs Eyre, but to leave that matter for the parties to resolve. In the absence of submissions, and as both parties asked us not to decide that matter, we have not done so.

172. However, if the parties are unable to come to an agreement, they have permission to revert to the Tribunal within 45 days from the date of issue of this decision, and the same Tribunal panel will then decide the quantum of the tax payable by Mr and Mrs Eyre following their sale of Burnsall Street.

173. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Rules. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. That time limit applies, in relation to the matters decided in this decision notice, irrespective of whether the parties make an application under §171.

174. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**Release Date: 23<sup>rd</sup> APRIL 2025**