



IN THE COUNTY COURT AT
CENTRAL LONDON

Case No: J90YX440

Thomas More Building
Royal Courts of Justice
Strand
London, WC2A 2LL

Date: 31st July 2026

Before :

HIS HONOUR JUDGE HOLMES

Between :

NICOLA GREER
(trading as One World Montessori Nursery)

Claimant

-and-

**THE LONDON BOROUGH OF
HAMMERSMITH & FULHAM**

Defendant

Mr Martin Strutt (instructed by Gullands Solicitors) for the Claimant
Mr John McLinden KC & Mr Michael Reason (instructed by the Legal Services department
of the London Borough of Hammersmith & Fulham) for the Defendant

Hearing date: 1st to 4th June 2026

JUDGMENT

His Honour Judge Holmes:

1. The method of education pioneered by Maria Montessori in Italy in the early years of the twentieth century has spread around the world. It found its way to Brook Green in West London in a nursery run by Nicola Greer. Ms Greer opened her nursery there in September 2004. The lease of those initial premises was due to expire in August 2018, as a result Ms Greer was looking for other premises that she could rent to continue the nursery. Ms Greer became aware that there was an empty basement at 56 Minford Garden, W14, about two-thirds of a mile from Brook Green. She was aware that a nursery had been run from the basement before and that it was owned by the London Borough of Hammersmith and Fulham.
2. It is the Claimant's case that she made contact with her councillor, Councillor David Morton in late May 2018 and asked him whether the basement might be available. Councillor Morton put Ms Greer in touch with Mr Gavin Ross who was part of the Council's Commercial Property Services team. Ms Greer and Mr Ross spoke by telephone. Ms Greer says that in the conversation, Mr Ross told her that the basement had been vacant for several years, that the commercial arm of the Council had transferred the basement to the housing department, but that Councillor Morton had asked him to make it available to Ms Greer for use as a nursery. Mr Ross also said that he would need to make various checks including whether the housing department would transfer the basement back to the commercial department, whether the planning department confirmed that the premises could be used as a nursery, and that the residents of number 56 Minford Gardens did not object to a nursery being operated from the premises. Ms Greer was aware that the residential premises above the basement were rented out by the Council on secure tenancies.
3. Ms Greer was keen to visit the property, but was told by Mr Ross that he had not located the keys, and by Mr Nigel Brown, the head of Commercial Property Services, that she could not view the property until after Mr Ross had made the checks. Ms Greer's case is that in a telephone call on 12th June 2018, Mr Ross told her that he had completed the checks. He said, of particular relevance, that none of the residential tenants of 56 Minford Gardens or adjacent properties had objected to the property being used as a nursery. Ms Greer viewed the property on 15th June, and on 31st July entered into a written agreement to take a 15 year lease of the basement on an initial rent of £15,000 per annum. Ms Greer then spent in excess of £100,000 refurbishing the property. The lease of the property was dated 16th January 2019.

4. Once the building works began, so did the complaints from the residents of 56 Minford Gardens. It was only after the lease had been signed that the Council's Housing Manager informed Ms Greer that the tenants directly above the nursery had extreme noise sensitivity. Various neighbours complained about the noise of the children once the nursery was up and running. It was at this stage that Ms Greer discovered that the neighbours had not been consulted about the opening of a nursery in the basement. Ms Greer made a complaint to the Council on 3rd June 2019. Cate Evans, the Council's head of customer services found that Ms Greer had been told that the residents of Minford Gardens had been consulted about the possibility of opening a nursery but that no such consultation had taken place. The neighbours above the nursery make persistent complaints, bang on the floor and are said to engage in other forms of anti-social behaviour directed towards Ms Greer and the nursery.
5. The Council accept that in an early telephone conversation, probably with Mr Ross, that Ms Greer was told that the residents would be consulted. It is said that Mr Ross thought that the Council would be required to consult, but that subsequently he was told that consultation was not necessary and therefore did not take place. The Council denies that Mr Ross, or any other employee, told Ms Greer that the neighbours had been consulted and did not object to the nursery.
6. At the heart of this case is a simple factual question: was Ms Greer told that the neighbours had been consulted and did not object to the nursery or was she told that they would be consulted and thereafter assumed that that is what had taken place.

THE EVIDENCE

7. I heard evidence from four witnesses: Ms Greer and her expert on valuation of the business, Mr Stamp; and Gavin Ross and Uche Alioha from the Council. Ms Greer's son, Gabriel, provided a witness statement and attended the trial. Mr McLinden KC indicated that he did not wish to cross-examine Mr Greer. I have read his witness statement and it is uncontested evidence.

THE APPROACH TO THE EVIDENCE

8. Much has been said in recent years about the approach which a court should take to the evaluation of oral evidence, particularly in relation to witnesses being required to recall events a number of years after they occurred. The cases began with the decision of Leggatt, J., as he then was, in *Gestmin SGPS SA v. Credit Suisse (UK) Ltd* [2014] EWHC 3650 (Comm); [2020] 1 C.L.C. 428. This was then developed by Mostyn, J. in *Lachaux v. Lachaux* [2017] EWHC 385 (Fam); [2017] 4 W.L.R. 57 and *Carmarthenshire County Council v. Y* [2017] EWFC

36; [2017] 4 W.L.R. 136; then by Stewart, J. in *Kimathi v. Foreign and Commonwealth Office* [2018] EWHC 2066 (QB); and finally in *R (Dutta) v. General Medical Council* [2020] EWHC 1974 (Admin). There have been subsequent cases making the same point.

9. Leggatt, J. in *Gestmin* expressed the issue in this way:

“15. An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.

“16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people’s memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

“17. Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called ‘flashbulb’ memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description ‘flashbulb’ memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness’s memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

“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. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is

presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

“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. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party’s lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

“20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness’s memory has been ‘refreshed’ by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. 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. It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously

presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.

“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. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”

10. In *Dutta*, Warby, J. made reference to Lord Bingham’s essay, *The Judge as Juror* in *The Business of Judging* (Oxford, 2000) where it was said, “the primary method of analysing the consistency of the evidence with what is agreed or clearly shown by other evidence to have occurred. The witness’s demeanour was listed last, and least of all.” (para [40]).
11. The last word on this issue belongs to the Court of Appeal in *Kogan v. Martin* [2019] EWCA Civ. 1645, per Floyd, L.J. who said:

“We start by recalling that the judge read Leggatt J’s statements in *Gestmin v Credit Suisse* and *Blue v Ashley* as an “admonition” against placing any reliance at all on the recollections of witnesses. We consider that to have been a serious error in the present case for a number of reasons. First, as has very recently been noted by HHJ Gore QC in *CBX v North West Anglia NHS Trust* [2019] 7 WLUK 57, *Gestmin* is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary

evidence and evidence upon which undoubted or probable reliance can be placed. Earlier statements of this kind are discussed by Lord Bingham in his well-known essay *The Judge as Juror: The Judicial Determination of Factual Issues* (from *The Business of Judging*, Oxford 2000). But 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."

12. I set out those passages in full in deference to the importance which counsel attached to them. They seem to me to state the obvious. The best way to anchor the evaluation of evidence in a case such as this is to focus on contemporaneous documents. The emails in this case provide a timeline and direct evidence of what was being said and considered at that time. But one has to accept that the picture provided by emails is not always complete. Telephone conversations and face-to-face meetings may, and in this case did, take place. Things of importance are likely to have been said. There is often far more nuance in oral communications than in a quickly written email. Another important factor in evaluating the evidence is to consider the well-crafted letter as against the dashed off email.
13. With that approach well in mind, I propose to structure this judgment by setting out the contemporaneous documents, then to consider the evolution of the complaint that Ms Greer is making in this case, before turning to the written and oral evidence of the witnesses.

CONTEMPORANEOUS DOCUMENTS

14. On 25th May 2018, Ms Greer made contact with Councillor Morton by email and enquired about the availability of the basement at 56 Minford Gardens. She said that a nursery used to operate from the building and that it appears not to have been sold. She thought it belonged to the Council. Councillor Morton replied a few hours later saying that he would follow it up. Ms Greer followed that up the following day saying that she had applied for the title deeds online and that a planning search showed only applications for use as a nursery. Ms Greer expressed a desire to move quickly on the property. The following week Ms Greer chased Councillor Morton again. He replied saying the director of children's services was investigating. A few days later, Ms Greer went to one of Councillor Morton's surgeries.

15. Councillor Morton then made contact with Nigel Brown, head of asset strategy and portfolio management, on 4th June. He forwarded Ms Greer's emails and added this of his own:

"I understand that Nicola Greer has been in contact with you. She came to my surgery on Saturday morning and is very keen to progress the Minford Gardens location. She originally told me that they had until September but it now appears that they have to have a decision this week in order to re-decorate and obtain the relevant OFSTED inspections. As you will have gathered, she is very determined.

"She mentioned that a nursery school building was let to Ravenscourt Parenting last year on a nominal rent of £1500 a year for 5 years. I don't know the background to this but she seems to be expecting a favourable deal.

"I hope we can help her!"

16. Councillor Morton received an out of office from Mr Brown, which gave Gavin Ross as the person to contact, so Councillor Morton forwarded his email to Mr Ross. Mr Ross is a valuer in the corporate property services department of the Council. A few hours later, having not heard from Mr Ross, Councillor Morton chased for a response.
17. Meanwhile, Mr Ross was making enquiries with Daniel Rochford who was within the housing department. Mr Rochford was unaware of the premises. By 29th May, Nigel Williams, a property asset systems manager in the building and property management team of the Council replied saying that 56 Minford Gardens was a housing property and the basement was let as a nursery to the Pre School Alliance but had been vacant for eight or nine years. There had been plans to convert it back to residential use as social housing, but that had not materialised.
18. By 6th June, housing had agreed for the property to be released for nursery use. This was communicated to Councillor Morton. The information was also communicated to Ms Greer by Mr Ross. In an email on 7th June, Mr Ross says that Ms Greer, "is very happy". He said he was arranging access. There then followed a desperate search for the keys to the property. Ms Greer kept up the pressure to keep the process moving. The council officers were clearly concerned that Ms Greer would complain about the lack of access to Councillor Morton. Mr Greer did contact Councillor Morton on 12th June. Her email begins, "Gavin Ross has confirmed that we will be able to secure the lease of 56 Minford

Gardens, which is fantastic news.” She then asks for his assistance with gaining access. The locks were changed on about 15th June.

19. On 15th June, Ms Greer saw the property, she said in an email that day, “We saw the premises today and with a lot of work, they will be absolutely perfect!” She then asks Councillor Morton (and the other Councillors in the ward in which Minford Gardens sits) to try and help with getting the lease signed off. By 18th June, Ms Greer had a clear set of works to be undertaken.
20. The first note of caution then comes in an email from Mr Ross to Mr Brown on 13th June. Having dealt with the access issue, Mr Ross says, “Unless you think otherwise, until the decision is made I can keep any contact I have with Nicola Greer to just access and the condition of the property, but reserving anything else until instructions are clarified.” Nigel Brown then drafted an email to Councillor Morton, which he shared with Sarah Thomas and Kevin Gordon on 14th June, it read as follows:

“The above asset is a HRA [housing] asset. I can confirm that following discussions with Housing team it is a vacant basement premises at 56 Milford Gardens and it is intended to be released so it can let as a nursery on commercial terms.

“Firstly, there is a requirement for the residents living above the premises to be consulted on the proposed nursery use. Although the use was previously a nursery, as it was several years ago the need to consult residents is still required.

Secondly, the terms for any letting of the premises will need to be agreed and any ingoing occupier is checked so they have the funds and expertise to fit out the property as well as being confident it will meet the needs of Otsted too.

“Option 1 - The Council could market the property via local agent and it is likely to take 3-4 weeks to undertake this and then review offers and make a recommendation once due diligence and financial checks are undertaken (further 1-2 weeks). The works are likely to take 4-6 weeks by the ingoing occupier so it is unlikely that an occupier will be in place with the property leases completed before October 2018.

“Option 2 - The Council could consider allow One World Montessori Nursery a defined timeline (say 3 week) to view the property, assess the cost of the works and for a commercial property deal to be agreed. It is

suggested the Council outlines, it's commercial terms for occupation including rental terms and lease length and it would be the One World Montessori to undertake the works at their cost to a high standard. All property leases must be agreed and signed before any occupation of the nursery is agreed and local residents will need to provide their input.

“For either option, the Council requires to get best value for its assets under Local Government Act 1972 and therefore if Option 2 is pursued then it is important One World Montessori Nursery understand this.”

21. The email was sent the following day by David Burns, the assistant director – growth, which read:

“I just wanted to drop you a note on the above property and the One World Montessori Nursery. The property is a HRA asset, and so recommendations around it fall under my remit. I can confirm that the vacant basement premises at 56 Minford Gardens can be released for use as a nursery and we will work with the One World Montessori Nursery to come to a suitable agreement for the property. However, in order for the Council to satisfy its best consideration requirements, this will need to be on commercial terms and the Nursery will need to agree a lease and an appropriate rent with the Council. Gavin Ross in the property team is leading on this aspect.

“The Council will also carry out appropriate checks on One World, to confirm they have the funds and expertise to fit out the property, as well as being confident it will meet the needs of Ofsted too.

“The Council will allow the One World Montessori Nursery to view the property, assess the cost of the works, and will negotiate an appropriate commercial arrangement. The Council will set out its commercial terms for occupation including rental terms and lease length. The One World Montessori would undertake the works at their cost to the relevant standard. All property leases must be agreed and signed before the nursery is able to occupy the property. There may also be consultation with the residents above.

“I’m happy to discuss this in more detail.”

22. There then followed a discussion about who would need to arrange consultation. The draft email to Councillor Morton had made reference to consultation. The email actually sent considered it a possibility. On 15th June at 05:27, Brian

O'Mara was asking who would need to coordinate the consultation. By 11:39, Jane Martin, the acting strategic head of housing management services, replied saying, "With reference to the consultation, I've spoken to Peter Hannon this morning and apparently the property in the basement of a terrace of street properties and is not on an estate so from a housing management perspective we wouldn't need to consult with residents." There is comparatively little contemporaneous reference to consultation in the internal Council emails, or those emails passing between the Council and Ms Greer.

23. On 26th June heads of terms, subject to contract, were issued to Ms Greer. Ms Greer signed these on the same day and agreed to meet Mr Ross on 2nd July at the property with a floor fitter and electrician. She was asking for the property to be cleaned before then.
24. There are further documents which show the steps taken to complete the work on the nursery and the problems which were encountered, but those are not relevant for these purposes. In an internal meeting on 19th June 2019, Mr Ross is noted as having said, "confirmed no consultation had taken place with residents. Commercial and housing assumed this was being managed by the other. Previous use as a nursery was a tickbox for councillors." Kevin Gordon added, "Planning use D1, residents only need to be consulted if there is an application for a usage change. The council reserves the right to sweat the assets." Complaints followed.

EVOLUTION OF THE COMPLAINT

25. The Council places some significance on the way in which Ms Greer's complaint has evolved over time. On 29th April 2019 there was a meeting with Duncan Moy, Gavin Ross and Uche Alihoa. There had been discussion at the meeting about complaints made by the neighbours directly above the nursery. Ms Greer is complaining that the Council allowed her to spend £40,000 on renovations whilst being aware that the upstairs neighbours were vulnerable and known to make complaints against other residents. She adds,

"In addition, you made it clear to me at the outset that the views of the residents at 56 Minford Gardens would be taken into consideration before any agreement with the nursery would be entered into. It is inconceivable that the matter of Miss Ahmad's 'noise sensitivity' would not have been raised by the Ahmad's then."

The point made by the Council is that Ms Greer does not say that she was told that consultation had taken place and no objections were raised.

26. A further complaint was sent on 3rd June 2019. In this document Ms Greer complains about the condition of the property and various actions and inactions by the Council concerning the condition of the property. Ms Greer then adds:

“In the early stages of negotiating the lease, I was informed by Nigel Brown (Head of Property Services) that the residents of Minford Gardens would be consulted on their views about the nursery being located there. When I signed the agreement to enter into the lease, I therefore understood that the residents had been consulted and that there were no objections. However, when my builders began renovating the property, the neighbour referred to above was extremely hostile and abusive towards them - trespassing upon the property, appearing at windows, taking photographs and making threats. On numerous occasions (and after each encounter with this neighbour), my builders would find human excrement in the nursery playground.”

The Council makes the same point about the absence of a reference to being told that the consultation had taken place and also, in relation to this complaint, that there is no reference to Mr Ross. Rather it is said that it was Mr Brown who spoke to her concerning the lease. Later in the same complaint, Ms Greer refers to the Council withholding the information about the upstairs neighbours from her. Ms Greer says that her focus in the complaints was not on, or not just on, the question of consultation.

27. The first letter of claim was sent on 18th March 2021 which contained the following sentence, “LBHF informed our client, prior to the lease being entered into, that residents had been consulted and there were no objections to there being a nursery in the basement floor. This is accepted by LBHF as being the case.” The letter was focused on an argument that the Council were in breach of covenant or derogation from grant. The letter is written to support that analysis of the case.
28. A second letter of claim was sent on 19th August 2022. In that letter the following is said,

“On or around the 12th June 2018 Mr. Ross telephoned our client to inform her that he had carried out the necessary checks and that none of the residential tenants of 56 Minford Gardens and adjacent properties had objected to the Premises being used for the purposes of a nursery school.”

That is the first time that the allegation as pleaded appeared in any recognisable form.

29. The Particulars of Claim, which are dated 17th November 2022, make the following averment:

“On or around the 12th June 2018 Mr. Ross, acting on behalf of the Defendant council, telephoned the Claimant and told her that he had completed the checks referred to in Paragraph 5.3 above and that, in particular, none of the residential tenants of 56 Minford Gardens or adjacent properties had objected to the Premises being used as a nursery school.”

30. In her witness statement, Ms Greer referred to a telephone conversation that she had with Mr Ross on about 6th June 2018:

“On this occasion, he seemed more guarded than he had been previously. He confirmed that Housing was willing to transfer the property back to Commercial; however, there were now additional “checks” that needed to be completed. These included obtaining confirmation from the Planning Department that a nursery could operate from the premises, and confirmation that the other residents of 56 Minford Gardens had no objections to living above a nursery.”

Then in paragraph 20 of her statement, Ms Greer says: “On 12 June 2018, Gavin Ross telephoned me and said that he had completed the “checks” and that “no objections” had been raised. As a result, he would be able to make Basement, 56 Minford Gardens available to me.”

THE WITNESS EVIDENCE

31. Ms Greer says in her witness statement that Councillor Morton telephoned her on 5th June 2018 “with good news”. He told her that the basement would be released by the Council for use as a nursery and that she should liaise with Gavin Ross on the next steps. Ms Greer spoke to Mr Ross shortly afterwards and Mr Ross told her that the property had been transferred internally from commercial to housing and that he needed to check with housing that they were prepared to transfer it back. Ms Greer says that they spoke shortly after, probably the following day. I have just set out the email of 6th June. In addition, Mr Ross told them that they could not view the property until after the checks had been completed. Ms Greer then began to speak to Nigel Brown. He suggested an alternative location, but nothing came of that. In a following conversation Mr Brown said that Mr Ross was still conducting the necessary checks.
32. Ms Greer describes the central issue in this case in her witness statement in these terms: “On 12 June 2018, Gavin Ross telephoned me and said that he had

completed the “checks” and that “no objections” had been raised. As a result, he would be able to make Basement, 56 Minford Gardens available to me.” Ms Greer also recounts a meeting with Mr Ross at the premises on 15th June,

“We met at the gate in front of the building on Minford Gardens. The gate is at the top of the steps leading down to the basement premises. On this day, it had a padlock on it. Gavin Ross told us that he needed to collect the key to the padlock from one of the tenants. We remained at the gate and watched as he went up the steps to the residential entrance and rang the doorbell. A man (whom I later came to know as Mr Ahmed) came out with a key. He greeted Gavin Ross, and they walked down the steps together to where we were standing. Gavin Ross introduced Mr Ahmed to us, saying, “This is one of the tenants from the building.” He then turned to Mr Ahmed and said, “These are the ladies we were telling you about, who are going to open the nursery.” Given that both Gavin Ross and Nigel Brown had stated that the views of the residents had to be taken into account before any agreement could be made, I took this as clear confirmation that those views had been sought and no objections raised. It was my firm understanding that the consultation with residents had taken place, as required, and that the Council had considered and resolved any concerns.”

33. The lease had to be signed off at a higher level. Ms Greer then says, “However, on 18 June, I received a telephone call from Nigel Brown. He said that Gavin Ross had completed the “checks” and that “no objections” had been raised. As a result, I would be given the opportunity to secure the lease on the premises.” Ms Greer says,

“Given that Nigel Brown had previously made it clear that the views of the residents would need to be considered before any agreement could be made, I understood his choice of words – “no objections” – to mean that the residents of 56 Minford Gardens had been consulted and had not objected. That understanding was reinforced by the earlier introduction to Mr Ahmed at the property, where Gavin Ross had said we were the “ladies” who were “going to open the nursery”.”

34. The heads of terms for the lease followed, as did a determination of the appropriate rent. The heads of lease were signed on 31st July. As to the significance of the lack of objections from residents, Ms Greer says,

“The fact that I was told that “checks” with Housing, Planning and the residents of Minford Gardens had taken place – and that there had been

“no objections” – was very important to both me and my mother. This was particularly significant in relation to the residents, since the nursery would be operating directly beneath people’s homes, and it was clear that we needed to get along. We wanted a calm and cooperative relationship with the other residents and hoped they would feel positive about our presence. Had we believed there was opposition to our being there, we would not have proceeded. In a building like that, where the nursery and residents were in such close proximity, any hostility would pose too great a risk – as ultimately proved to be the case.

35. The work to the premises was significantly delayed and instead of opening in September 2018, it did not open until January 2019. Ms Greer also gives an account as to how the problems with the neighbours developed. They began almost immediately with a complaint about the noise of the building works on the day those works began in August 2018. At this stage, Ms Greer simply thought that once the building works were completed, the complaints would abate. When the lease was finally signed on 16th January 2019 Ms Greer says she did so, “on the understanding that the complaints received had related to noise from construction, and that the residents of 56 Minford Gardens had not raised objections to a nursery being located in the basement premises.”
36. During the course of the trial Ms Greer was asked about the various meetings and emails. She maintained that at the meeting on 12th June, having earlier been told that there would be checks carried out, was told that no objections had been raised. Ms Greer was asked about Mr Ross’ motives in the context that the claim is pleaded as a claim in fraud. She said that she could not comment on his motive. She did not know whether he was lying to her. She said that what he said turned out not to be true. She was asked why she said he had been fraudulent and she said that what he had said had turned out not to be true. She said she could not comment on whether it was deliberate or a mistake, she could not comment on his motives. She said she did not want to withdraw the allegation of fraud.
37. She was taken to an email on 12th June, the day when Ms Greer says that she was told about the consultation. The email concerns gaining access to the property and getting the locks changed and says nothing about consultation. Ms Greer said that that was the day when Mr Ross said that she could have the property. She said that she could not comment on internal conversations within the Council. In relation to the email of 13th June in which Mr Ross says that “until the decision is made I can keep any contact I have with Nicola Greer to just access and the condition of the property, but reserving anything else until instructions are clarified.” Ms Greer said that Mr Ross was saying one thing to

her – that she had the property – and another thing to those in the Council. There was also reference to Ms Martin’s email of 13th June which makes reference to Councillor Morton thinking “it’s signed and sealed”. Ms Greer accepted that the emails were about keys.

38. Ms Greer was taken to the email of 14th June which refers to the need to consult. Ms Greer said that she had already been told that the consultations had been completed and that there were no objections. The same was true of emails in which Mr Ross was copied on 15th June making reference to a further email this time saying consultation did not need to take place. Ms Greer maintained that what was being said internally was different from what she was being told at the time.
39. Ms Greer accepted that she had not made an allegation that Mr Ross had been dishonest in her initial complaints. She said she was focused on the problems that she was facing. She said that the thought that Mr Ross had been dishonest did not form overnight, it began to trouble her that she had not been told about the noise sensitivity. She was taken specifically to an email on 29th April 2019 in which she raised the various complaints. She formulated part of her email in these terms,

“LBHF allowed me to spend £40,000 renovating a building and to enter into a 15 lease to operate a nursery from that building without informing me that the tenants directly above were ‘vulnerable’, that one did not sleep at night, but during the day, on the floor with her ear against the floorboards, and that furthermore, she suffered from ‘noise sensitivity’. I do not accept that LBHF were unaware of this, as Uche also stated that the same tenants had a history of making complaints against other residents. In addition, you made it clear to me at the outset that the views of the residents at 56 Minford Gardens would be taken into consideration before any agreement with the nursery would be entered into. It is inconceivable that the matter of Miss Ahmad’s ‘noise sensitivity’ would not have been raised by the Ahmad’s then.”

It was put that there was no mention of Mr Ross having told her that he would consult and then that he had consulted and there was no objection. She said the email was to Nigel Brown rather than Mr Ross (although he was in copy). It was one of many issues in the email. She did not have experience of people saying things to her which were untrue.

40. The outcome of the stage 1 complaint was provided by Cate Evans, head of customer services, on 15th July 2019. In relation to the first issue in the complaint,

Ms Evans summarises it as, “You were informed by the Head of Property Services at LBHF that the residents of Minford Gardens would be consulted on their views about the nursery being located there, but they were not consulted.” The response to that point is, “Gavin Ross confirmed that consultation had not taken place with residents as previously there was a nursery on the site. Kevin Gordon confirmed that residents only need to be consulted if there is an application for a usage change. I’m sorry you were incorrectly informed that residents had been consulted.”

41. Ms Greer’s son, Gabriel, says in his statement that he heard conversations at home between his mother and grandmother about the nursery. He remembers being aware that his mother had been told that local residents would be consulted, something he knew was important to his mother.
42. Gavin Ross gives a different account. He accepts that he spoke to Ms Greer by telephone. He does not say what was said, but the call was followed up by an email from Ms Greer on 12th June. He accepts that he visited the premises with Ms Greer on 15th June. He does not describe any conversation with a resident. Indeed, he says that he had the keys. Mr Ross says this in his statement, “In the lead up to signing the lease for the Premises, Ms Greer was very much focussed on securing access to undertake the works at the Premises and ensuring that the Nursery opened on schedule. She did not ask me about her neighbours or the previous occupants of the Premises.”
43. Finally, responding to Ms Greer’s claim, he says this:

“Ms Greer claims that she was induced by statements that I made to her about the Premises and consulting with the residents about the Nursery. I do not accept that I made any statements to Ms Greer to induce her to agreeing a lease for the Nursery. Before I had even been instructed on the matter she had already made enquiries with the Land Registry as to who owned the property, and she was already aware that the property had been vacant for a number of years and that a nursery had previously occupied the property in question. From our earliest communications, it seemed to me that Ms Greer was intent on securing a lease for the Nursery at the basement of 56 Minford Gardens, no matter what.”

He adds that the allegation about consultations was made for the first time at a meeting on 20th June 2019.

44. In his oral evidence, Mr Ross accepted that at some stage he told Ms Greer there would need to be a consultation. He did not recall telling her subsequently that

there was no need for consultation. He agreed that he thought Ms Greer would be very interested in the outcome of any consultations. He accepted that she would be curious, but he said that at no stage did Ms Greer ask him what the outcome of the consultation was. Mr Ross said that he did not tell her that there had been consultations. He said the consultation was a housing issue. When it was put to him that he had told Ms Greer that there had been a consultation he said that he had never said that. It would be a lie for which there would be evidence. The Council is subject to Freedom of Information requests. There was no way in which he could cover it up. He agreed he was keen to get on with the project as councillors and senior officers were being contacted by Ms Greer.

45. Mr Ross said that putting a nursery in the building was in retrospect not a good idea. It was a residential building. He accepted that now the issues with the neighbours were known, it would be necessary to disclose that in any future negotiations to let the premises.

46. Uche Alihoa, a neighbourhood services manager, gave evidence about the upstairs neighbours who raised the complaints. Her evidence was not really relevant to the issue that I need to resolve. She describes the housing department receiving complaints about noise caused by building works. Ms Alihoa then says this,

“As you would expect in social housing, some of our tenants are vulnerable and as such they need to be managed appropriately and with due regard to and consideration of their vulnerabilities, if any. One of the families living above the Nursery has a household member who is considered to be vulnerable. They are unable to sleep during the night and therefore they sleep during the day on the floor of their flat. It is unorthodox, but that is how they have lived for several years and before the Nursery took up occupation below. In addition, the same family member suffers from noise sensitivity and seemingly they are unable to cope with the noise made by the children attending and the staff working at the Nursery. This has resulted in that resident making complaints of noise nuisance including complaints that the children are singing and staff banging doors and making noise.”

47. Ms Alihoa describes Ms Greer as being initially sympathetic to the vulnerabilities of the neighbours. Noise insulation was installed. The tenant refused mediation, whilst Ms Greer was open to this. The tenant has refused an offer of rehousing. The clear impression in her oral evidence appeared to be that Ms Greer should adapt to the neighbours. Whilst, of course, one should always

try to defuse tension with neighbours, the attitude appears to be that the tenants are vulnerable and therefore Ms Greer must stop making noise in the nursery. That is unrealistic. The council granted a tenancy of the basement for a nursery. One cannot expect a nursery to make no noise. The nursery had planning permission. If the allegations made by Ms Greer about the actions of the neighbours are true, and I make it clear that I have not heard from the neighbours and therefore make no findings about the truth of them in that context, then the response of the Council has been wholly inadequate. The Council do have powers to deal with anti-social behaviour from tenants, and those powers should have been actively considered rather than suggesting that Ms Greer should operate the nursery differently. She said in oral evidence that she was unaware of any issue with the upstairs neighbours until the issues with the nursery building works were raised.

ADMISSIBILITY OF THE CATE EVANS CONCLUSION

48. One of those complaints was investigated by Cate Evans. In her outcome, Ms Evans appears to conclude that Mr Ross did tell Ms Greer that the residents had been consulted. Mr McLinden KC seeks to argue that the “Evans Apology”, as he termed it, is not admissible in evidence. The reference is to the final sentence of this paragraph in Ms Evan’s letter of 15th July 2019:

“Gavin Ross confirmed that consultation had not taken place with residents as previously there was a nursery on the site. Kevin Gordon confirmed that residents only need to be consulted if there is an application for a usage change. I’m sorry you were incorrectly informed that residents had been consulted.”

Mr McLinden’s argument is that admitting it into evidence would be contrary to the rule in *Hollington v. F. Hewthorn & Co. Ltd* [1943] 1 K.B. 587, CA and as applied more recently in *Evans v. Barclays Bank plc* [2025] UKSC 48; [2026] Bus. L.R. 328.

49. In *Hollington* there had been a collision between vehicles being driven by Basil Hollington and Ernest Poll. The vehicle Mr Poll was driving was owned by F. Hewthorn & Co. Ltd. Basil Hollington was driving a vehicle owned by Robert Hollington. Mr Poll was convicted of careless driving. Basil Hollington died after the criminal trial, but before civil proceedings were commenced. Robert Hollington commenced proceedings for negligence against F. Hewthorn & Co. Ltd as the first defendant and Mr Poll as second defendant. Robert Hollington wished to adduce the fact of Mr Poll’s conviction as evidence of his negligence. The Court of Appeal held that the conviction was not admissible. Goddard, L.J.

(delivering the judgment of the Court which comprised Lord Greene, M.R. and Du Parcq, L.J. in addition to Goddard, L.J.) held that evidence of the conviction was inadmissible. The decision is primarily based upon that being the long-understood position. At page 594, Goddard, L.J. says,

“The court which has to try the claim for damages knows nothing of the evidence that was before the criminal court. It cannot know what arguments were addressed to it, or what influenced the court in arriving at its decision. Moreover, the issue in the criminal proceedings is not identical with that raised in the claim for damages.”

50. It is said that in essence the civil court would have to retry the criminal case to determine what weight to attach to the criminal conviction. Hilbery, J. rejected the admissibility on the basis that it was *res inter alios acta* (a thing done between others), i.e. that the parties before the criminal court were not the same as before the civil court. In the former The King (at least in name) prosecuted Mr Poll. Robert Hollington and F. Hewthorn & Co. Ltd were not party to the prosecution. They, therefore, had no means of influencing the conclusion. Reference is made by Goddard, L.J. to the decision in the *Duchess of Kingston's Case* (1776) 2 Sm. L.C. 13th ed. 644 (also reported at 168 E.R. 175, although that is taken from the report at 1 Leach 146, and does not include the quotation relied upon by the Court of Appeal in *Hollington*). The passage attributed to the then Chief Justice in the *Duchess of Kingston's Case* is:

“it would be unjust to bind any person who could not be admitted to make a defence, or to examine witnesses or to appeal from a judgment he might think erroneous: and therefore the judgment of the court upon facts found, although evidence against the parties, and all claiming under them, are not, in general, to be used to the prejudice of strangers.”

This is true, says Goddard, L.J. not just of criminal convictions but of civil cases too. If the earlier determination is between the same parties, it is conclusive of the issue. If it is not between the same parties, then it should not be admitted in evidence.

51. The position in *Evans v. Barclays Bank* was a little more complex but in essence the Court of Appeal, in reversing a decision of the Competition Appeal Tribunal, relied upon two decisions of the European Commission concerning banks operating cartels in relation to foreign exchange spot trading. There was an application for a class representative claim. One of the issues that the Competition Appeal Tribunal was required to consider in deciding whether to

permit a representative claim, was the strength of the claim. In the Court of Appeal, it was said:

“a European Commission decision on a separate infringement but involving more or less identical facts provided strong support for the proposed class representative’s claim on causation, and was admissible pursuant to the tribunal’s power in rule 55(1)(b) of the 2015 Rules to give directions as to the admission or exclusion from the proceedings of evidence.” (to quote the headnote in the report).

52. Lord Sales, in delivering the Supreme Court’s judgment, relies upon the decision of the Court of Appeal in *Rogers v. Hoyle* [2014] EWCA Civ. 257; [2015] Q.B. 265 at 305 (paras 39-40), and *Three Rivers District Council v. Governor and Company of the Bank of England (No. 3)* [2003] 2 A.C. 1 at 238 (para. 5), per Lord Steyn) for the proposition that the rule in *Hollington* is, “founded on a principle of fairness. That principle requires that a tribunal responsible for finding facts should base its findings on its own evaluation of the evidence and not on the evaluation of someone else who is not the relevant decision-maker.” (page 365, para 144). In addition, in a repetition of a point made by Goddard, L.J. in *Hollington*, unless the court enquires into the same facts, it is impossible to determine what weight to attach to the decision of the earlier decision maker.
53. Lord Sales also deals with an argument that the rule in *Hollington* is limited to judicial or quasi-judicial decisions. At para. 155, Lord Sales says:

“The attempt to confine principles of procedural fairness to decisions made by persons acting in a judicial or “quasi-judicial” (whatever that means) capacity has long since been discredited in administrative law, having been “scotched” as a “heresy” by the House of Lords in *Ridge v. Baldwin* [1964] A.C. 40: see *R v. Gaming Board for Great Britain, Ex p. Benaim* [1970] 2 Q.B. 417, 430. There is no warrant for limiting the rule in *Hollington v. Hewthorn* in that way. The reasons for treating findings made by an earlier decision-maker as inadmissible do not depend upon the capacity in which that person was acting. They apply to anyone who has previously expressed an opinion about what conclusions should be drawn from factual evidence.”

54. Ms Evans was adjudicating upon a complaint made by Ms Greer to the Council. She was a decision-maker. Subject to a couple of issues, the conclusion that Ms Evans reaches that Ms Greer had been incorrectly advised that the residents had been consulted, seems to me to fall squarely within the rule in *Hollington v. Hewthorn*. The two issues are possibly two sides of the same coin. First, the

Council was not just a party to the earlier determination, it was the decision maker.

55. It is necessary then to determine what Ms Evans was doing in her letter of 15th July 2019. Ms Evans was deciding, on behalf of the Council, whether Ms Greer had a legitimate complaint against the Council. She was making an administrative determination. There was significant discussion in submissions about what unfairness there was in this decision. The position in *Evans* or *Hollington* was different: there was a decision maker independent of the parties. One might ponder whether the position would have been different in *Evans* had the European Commission subsequently brought proceedings against Mr Evans or one of the banks. In my judgment the reasons behind the decisions in *Evans* and *Hollington* would not support a decision to exclude the European Commission's own determination in proceedings brought by or against it.
56. In this case, the Council could have adduced evidence to explain the decision made by Ms Evans. I was told that she left the Council's employ in September 2021. That does not mean that she was not available to give evidence. It is also surprising that the investigation documents were not disclosed in this case. Those were documents which were within the Council's control. The decision reached by a party themselves does seem to me to be in a different category from a decision taken by a third party.
57. Mr McLinden argues the unfairness would be to Mr Ross. It is right that it is pleaded by Ms Greer that Mr Ross has acted dishonestly in this case. Care must be taken with such claims because of the potential ramifications of the decision. That said, the fairness must be judged by reference to the parties. Mr Ross is not a party to these proceedings.
58. The second issue is that the determination by Ms Evans, written as it was on behalf of the Defendant, is a declaration against the Council's own interest. As is clear in *Hollington* had Mr Poll pleaded guilty then that admission of wrongdoing on his part would have been admissible. It seems to me that the same logic applies here. Ms Evans is reaching a conclusion and admitting on behalf of the Council that Ms Greer was misinformed. That admission must be admissible against the Council in these proceedings. Mr Strutt does not seek to argue that this is an admission within the meaning of CPR Part 14. The conclusion reached by Ms Evans is pleaded, although it is not pleaded as being an admission. In my judgment the letter written by Ms Evans is admissible.

THE LAW

59. The law of misrepresentation is not entirely straight forward being an amalgam of rules deriving from the common law, equity and statute. That said, there has been no substantial argument before me on the law. The following summary is provided in *Chitty on Contracts*, 36th edition (2026), at 10-006:

“To summarise the requirements that must be satisfied for a party (A) to have a remedy for misrepresentation that may give rise to a right to rescind a contract with the other party (B), and/or to claim damages for loss caused to A by having entered the contract:

“(i) A must have entered the contract after a statement of fact or law has been made on which it was reasonable to believe A was intended to rely;

“(ii) the statement must have been at least substantially untrue;

“(iii) a statement of opinion or of intention will not amount to a misrepresentation unless the person making it does not in fact hold that opinion or intention, though a statement of opinion may carry the implication that the person making it has reasonable grounds for believing what is stated is true;

“(iv) a statement that on the face of it is one of fact or law may in the context be reasonably understood as only an opinion; the question is whether A is reasonably entitled to rely on it;

“(v) a statement may be implicit, or be inferred from conduct, or be a “misleading half-truth”;

“(vi) if the statement was true at the time it was made but becomes untrue before the contract is agreed, there will normally be a misrepresentation if B does not correct the statement;

“(vii) the statement must have been made by B, or where it originated from a third person, adopted by B, or B must have had actual or constructive notice of it;

“(viii) the statement must have induced A to enter the contract. It need not have been the sole cause of A entering the contract but in most cases A must show that it would not have entered the contract, or would not have entered it on the same terms, “but for” the misrepresentation. However, if A is merely seeking to rescind on the ground of fraud it seems to be sufficient that the fraudulent statement was “present to A’s mind”, even if A might have entered the contract anyway;

“(ix) it is possible that the misrepresentation must be material, in the sense that it would influence a reasonable person; but it seems that B cannot

argue that the misrepresentation was immaterial if B should have known that A would be influenced by it;

“(x) it is not necessary that A believed that the statement was true if it entered the contract because at the time it was unable to prove that it was untrue;

“(xi) it is no defence that A could have discovered the truth. The Law Reform (Contributory Negligence) Act 1945 may apply to a claim for damages on the basis of negligence in tort or under s.2(1) of the Misrepresentation Act 1967.”

60. The statement must be false. “The question is how the words would be understood by a reasonable person in the factual context.” *Chitty* at 10-007 relying on *IFE Fund SA v. Goldman Sachs International* [2006] EWHC 2887 (Comm); [2007] 1 Lloyd’s Rep. 264 at [50].
61. I was taken by Mr Strutt to the definition of fraud which derives, in this context, from *Derry v. Peek* (1889) 14 App. Cas. 337 where it was held that in order for fraud to be established it is necessary to prove the absence of an honest belief in the truth of what has been stated. Lord Herschell put it in these words, at p.374, “... fraud is proved when it is shown that a false representation has been made: (1) knowingly; or (2) without belief in its truth; or (3) recklessly, careless whether it be true or false.”
62. In relation to negligence, it was made clear by Mr Strutt in opening that he was not pursuing any argument arising out of the decision of the House of Lords in *Hedley Byrne & Co. Ltd v. Heller and Partners Ltd* [1964] A.C. 465. The claim in negligent misrepresentation is founded solely on s.2(1) of the Misrepresentation Act 1967 which reads:

“Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.”

DISCUSSION

63. In some ways there is a simple and straightforward answer to this claim. Ms Greer pleads in paragraph 7 of the Particulars of Claim that:

“On or around the 12th June 2018 Mr. Ross, acting on behalf of the Defendant council, telephoned the Claimant and told her that he had completed the checks referred to in Paragraph 5.3 above and that, in particular, none of the residential tenants of 56 Minford Gardens or adjacent properties had objected to the Premises being used as a nursery school.”

She maintains that account in paragraph 20 of her witness statement. The contemporaneous documents make a representation that consultation had taken place on or around 12th June extremely unlikely.

64. Mr Ross became involved with the property on 4th June when an email was forwarded to him by Councillor Morton. There is nothing to suggest that Mr Ross had prior knowledge of the property. It had been in the hands of the housing department, not the commercial department that Mr Ross worked for. It is clear it had been vacant for some considerable time. Further, significant effort was put into seeking the keys for the property and eventually the locks had to be changed.
65. Ms Greer sent an email on 12th June, it said that Mr Ross had confirmed that she could have a lease of the property. It does not say that she was aware that checks, including with the neighbours, had been completed. Perhaps that is of no great surprise, she was simply communicating the good news of the lease to Councillor Morton who had been assisting her. Another difficulty with Ms Greer’s account is the internal emails which put the first discussion about consultation to 14th June. It comes in a draft email which Nigel Brown is planning to send to Councillor Morton. The draft is sent to Sarah Thomas and Kevin Gordon on the evening of 14th June. It is followed by an email early in the morning on 15th June. Brian O’Mara’s email to Nigel Brown and Jane Martin is asking who will coordinate consultation. Neither of those emails was initially sent to Mr Ross: they were forwarded to him a few hours later. That later email was on a different subject, so it is not certain that he would have read down the email chain to the discussion about consultation. He did reply to the email sent to him. However, by 11:39 on 15th June, Jane Martin sent an email to Nigel Brown, David Burns, Brian O’Mara and Gavin Ross which says that there is no need to consult. One would anticipate that if Mr Ross had already consulted, he would have replied saying that it had already been done.
66. What is also clear is that the consultation issue was one for housing. This was the housing department considering that they needed to consult the residential tenants. It was therefore very unlikely that Mr Ross would undertake the consultation himself. It is doubtful that he would have the necessary contact

details. It was the senior officers in the housing department who were discussing who should coordinate the consultation and ultimately decided no consultation was necessary. It is extremely unlikely that Mr Ross would have told Ms Greer on 12th June that consultation had taken place and that there were no objections. It may be a small additional point, but the idea that a council would complete a consultation in the period between Mr Ross first becoming aware of the possible transaction on 4th June and the alleged conversation on 12th June would be ambitious.

67. Further support for the suggestion that there was not a clear representation made in the terms now alleged comes from the complete silence over many months in relation to it. The complaint in April 2019 is focused on the council's knowledge of the neighbour's noise sensitivity. I find it very difficult to accept that if Mr Ross had told Ms Greer in June 2018 that the residents had been consulted and there were no objections, that this would not have found its way into this complaint. It would have been highly material and would be a point that Ms Greer would have made: her communications show her to be an intelligent and persuasive correspondent, she would have understood the significance of the point.
68. The further complaint on 3rd June 2019 is perhaps even clearer. Ms Greer says that she was told by Mr Brown that the residents would be consulted – note that this is not Mr Ross – she then says, “When I signed the agreement to enter into the lease, I therefore understood that the residents had been consulted and that there were no objections.” One has to ask why Ms Greer would have been relying on an understanding when she could have said “I was told by Mr Ross that a consultation had taken place and none of the residents objected to the nursery.” To repeat myself, my impression of Ms Greer as a witness is that she would not have missed that point and would have made it loudly.
69. It is against the context of that complaint that Ms Evan's letter of 15th July 2019 needs to be seen. The forensic power of the letter is the final sentence, “I'm sorry you were incorrectly informed that residents had been consulted.” That is not supported by the preceding sentences. Mr Ross confirmed that a consultation had not taken place and Mr Gordon said that that was because there was no change of use. In her complaint Ms Greer had said that she had been told that the views of the residents would be taken into account. Ms Evans is not responding to a complaint that Ms Greer was told by Mr Ross that the consultation with the residents had occurred and there was no objection. Whilst on a literal reading of Ms Evan's letter it does seem to say that Ms Greer was told that residents had been consulted, that conclusion does not seem to fit with the other evidence. This

is precisely the kind of concern which sits behind the rationale in *Hollington* and *Evans*. It has been argued that the Defendant could have led evidence from Ms Evans or produced the documents generated in the investigation. Those are valid points which need to be weighed in the balance.

70. It takes until the first letter of claim in March 2021 for the allegation to form around the allegation that Ms Greer had been informed that residents had been consulted and there were no objections. It took a further 17 months for it to be said that it was Mr Ross who made the call on 12th June 2018. That was over four years after the events.
71. Ms Greer's suggestion that she could not view the property until the checks with neighbours and others were completed, is not borne out by the documents. The emails suggest that the delay was first over getting the internal consents to let the property and secondly in finding the relevant keys. I also have significant difficulty accepting what Ms Greer says took place on 15th June 2018. Ms Greer alleges that Mr Ross needed to collect the key to the padlock from a tenant. That tenant, it is said, was the tenant who is causing the subsequent difficulties. It is quite a leap to suggest that having changed the locks, that the council or its contractors would put them into the hands of a tenant. It is also contradicted by the emails which records Mr Ross receiving the keys into his hands at 10:35 on 15th June. There is no reason to think that he would not have been given all of the keys. It is also inconceivable given what happened next, that if Mr Ross had said to the neighbour, "These are the ladies we were telling you about, who are going to open the nursery" that the response would not have been to raise an objection. The point was not taken, or put to the witnesses, but if that was in fact said to the neighbour who, together with his daughter, caused the subsequent difficulty, and on being told there was to be a nursery did not raise an objection, why is Mr Ross' alleged conversation on 12th June the operative cause of Ms Greer being induced to enter into the contract rather than her hearing with her own ears that the man was told that there was to be a nursery and he did not raise any objection. I do not accept that Ms Greer's recollection of the interaction with the neighbour on the 15th June is correct.
72. I am not satisfied on the balance of probabilities that the claim pleaded in the particulars of claim is correct. It may be that Ms Greer was told that consultation would need to take place, indeed that is pleaded in the Defence. It may have been Mr Brown who told her, as Ms Greer initially suggested. It may be that no one informed Ms Greer that consultation was no longer required, but that is not the allegation in this case. I also am far from satisfied that Mr Ross said anything about consultation in order to induce Ms Greer to enter into the lease (as alleged

in paragraph 8 of the Particulars of Claim). It seems to me that the pressure to make this transaction happen was coming from Ms Greer (supported by Councillor Morton). The commercial property section of the council was wholly unaware of this property until Ms Greer raised it with Councillor Morton. There was no clear financial incentive for Mr Ross to make a false representation to induce Ms Greer to enter into the lease. As Mr Ross said, he would have been inviting trouble given the paper trails that public sector bodies produce showing who knew what and when.

73. I did not consider Ms Greer to be deliberately seeking to mislead me. This has all taken place over the last eight years. Memories fade and perhaps harden around things that may or may not be entirely right. One can certainly see how the Evans apology may have added to this process, suggesting as it does that Ms Greer was told that there had been a consultation when one had not taken place. I also accept that it is odd, on this analysis, that Ms Greer did not chase up and ask what had happened in the consultation. If I am wrong and there was a conversation with the neighbour on 15th June – when Ms Greer was introduced as the person who would open the nursery – Ms Greer may have thought that this showed there were no objections. Otherwise, a judgment does not need to provide an answer to every point. I would be speculating to suggest that Ms Greer had a lot going on. If she thought the issue had been resolved then she may have moved onto more pressing issues.
74. The allegation that Mr Ross made the alleged representation fraudulently was wholly unsupported by the evidence and should never have been made. It was quite clear in Ms Greer's evidence that she may have believed that the representation was made, but she did not know why Mr Ross might have made the representation. Ms Greer may have come to the conclusion that the representation was false, but not every false representation was fraudulent. The claim cannot succeed and must be dismissed.

QUANTUM

75. I am not going to deal at any length with quantum given my findings. I found Mr Stamp to be an entirely persuasive witness. If anything, he was doing his best to value something which it was almost impossible to place a value on. If the appropriate measure of damage is the loss of value of the business, then the valuation of the business with the neighbours that Ms Greer has, as against the value of the business without those neighbours would appear to be the correct means of calculating the loss. Such calculations are not an exact science and Mr Stamp acknowledged the limitations. Comparable properties are only ever an indication to assist a valuer. In a case such as this, the value of those comparables

is reduced still further by the size and location of the relatively few nurseries. But even with those limitations an expert can still provide a valuation. I think in truth Mr Stamp was saying that the business is currently incapable of being sold, but anticipating a point made by Mr McLinden, someone may be prepared to take the risk but would only do so at a very significant reduction in the sum being paid. That is what Mr Stamp is doing. It may be that if the Defendant had obtained its own expert evidence that the precise diminution in value could have been debated between the experts. Maybe more information would have been before the Court. Had I found for the Claimant, I would have made an award of damages in line with Mr Stamp's report.

DISPOSAL

76. Before concluding, something has to be said about the bundles in this case. First, the preparation of bundles is not easy. One has to anticipate which documents are going to prove to be relevant. There must be an almost overwhelming urge to put every single document that has been disclosed into the bundle. In that way no one can criticise the bundles on the basis of omission. However, that temptation must be resisted at all costs. The result of bundles prepared on that basis is what we have here: bundles that are difficult, and in the case of the witnesses almost impossible, to navigate. One would anticipate that during the trial the court would have used the core bundle rather more than the other seven bundles. That is not how it worked out. The contemporaneous email correspondence – which was always likely to be the focus of the trial – was contained in “Bundle 3 Part 1 Defendant's Disclosure Lever Arch File 6”. The electronic bundle was divided into four. Counsel therefore seemed not to have the same bundle breaks that the judge and witness had. This resulted in counsel giving a bundle reference, me having to find the relevant document and then me saying which lever arch file it was in so my clerk could find it for the witness. The emails had also not been edited. The full train of emails, including every previous email to which it was a reply was included. The same email therefore appeared multiple times making the bundles still longer. Those emails, properly edited, should have been in the core bundle. The electronic and paper bundles need to be broken in the same way – even if the page numbers are continuous. The bundles also need a single numbering – in this case one to eight – so that the right bundle can be found easily by the witness. None of this should be difficult. Whilst not binding in the County Court, the Commercial Court Guide, the Chancery Guide and the King's Bench Guide all provide valuable assistance on the preparation of bundles. I am minded, subject to further submissions, given the wholly unsatisfactory nature of the bundles in this case to disallow the cost of their preparation.

77. I am grateful to counsel for their assistance with this case. I ask that Counsel liaise to agree an order giving effect to this judgment and any necessary consequential orders. If necessary, the matter can be listed before me to resolve any matters which remain in dispute.