Neutral Citation Number: [2023] EWHC 238 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No. PT-2021-LDS-000076**
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY, TRUSTS AND PROBATE LIST

Date: 10 February 2023

Before:

Mr Andrew Sutcliffe KC, sitting as a Judge of the High Court

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BETWEEN:

JULIE MATE

Claimant

and

(1) SHIRLEY CLAIRE MATE
(2) ANDREW DAVID MATE
(3) ROBERT CHRISTOPHER MATE

Defendants

- -

Mr Wilson Horne and Mr Timothy Sherwin (instructed by **Charles Russell Speechly LLP**) for the Claimant
Ms Caroline Shea KC and Mr Michael Ranson (instructed by **Chadwick Lawrence LLP**) for the Second and Third Defendants
The First Defendant appeared only as a witness and was not represented at trial

Hearing dates: 6-9, 12-14 September 2022 and 11 November 2022
(further written submissions dated 31 October 2022 and 2 December 2022)

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APPROVED JUDGMENT

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

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MR ANDREW SUTCLIFFE KC:

Contents

Introduction

1 The dispute in this case concerns members of a farming family and arises as a result of what was previously farmland being sold for a greatly uplifted value to a residential housing developer. It requires consideration of the doctrines of proprietary estoppel and unjust enrichment.

2 The claimant Julie Mate is one of five children of the first defendant Shirley Mate and her late husband Donald Mate. She has two brothers, Andrew Mate and Robert Mate who are the second and third defendants, and two sisters, Gillian Robson and Virginia Boothroyd. I refer to the various members of the family by their given names without meaning any disrespect to them.

3 Shirley was born in 1933 and married Donald in 1954. Gillian was born in 1955, Robert in 1957, Julie in 1960, Andrew in 1962 and Virginia in 1966. Donald died in 1992. The farm was a dairy farm in Netherton which is a village not far from Huddersfield, West Yorkshire. Donald and Shirley were partners in a milk bottling and milk retail business. Robert and Andrew became partners in the business shortly before Donald died.

4 Julie says that from late 2007 at the latest, encouraged by Shirley, she started looking into the potential development of some 40 acres of a part of the farm known as Netherton Moor (the Netherton Moor land). She identified a suitable planning consultant, Duncan Hartley, and arranged to bring him to a meeting with Shirley, Robert and Andrew at the farm on 23 June 2008. Following that meeting, Shirley, Robert and Andrew agreed that Julie should engage the services of Mr Hartley to assist her in achieving the removal of the Netherton Moor land from the Green Belt with a view to such land being allocated for housing on the Council's Local Plan.

5 Julie says that she worked on this project with Mr Hartley at various times between 2008 and late 2015 in reliance on promises made to her by Shirley that if she succeeded in removing the Netherton Moor land from the Green Belt and securing its allocation for housing, the proceeds of sale of that land resulting from its sale to a developer would be shared equally between Shirley and her five children.

6 In late 2011 the local planning authority, Kirklees Metropolitan District Council (the Council), published its Strategic Housing Land Availability Assessment (SHLAA). In late 2012 the Council published its Local Development Framework (LDF) Core Strategy. Both documents included two sites forming part of the Netherton Moor land as suitable, achievable and available and potentially suitable to be included in the Local Plan.

7 At the start of 2013, Julie telephoned Andrew to update him on the work she and Mr Hartley had done. She wanted to arrange a meeting with him so they could

consider potential housebuilders for the Netherton Moor land. According to both of them, this turned into an angry call. Julie says that Andrew responded to her suggestion by saying "what's it got to do with you". Andrew agrees he said that but also maintains that he told Julie on that call to stop doing any work on the project. That is a dispute of fact I need to resolve.

8 In late 2015, the Council published its draft Local Plan which showed that part of the Netherton Moor land had been released from the Green Belt. Julie sent a letter to Andrew, copied to the rest of the family, informing them of this significant news. She then discovered shortly afterwards that, without informing her, a year or so earlier Shirley, Robert and Andrew had entered into an agreement with the housing developer Persimmon Homes Limited (Persimmon). Although she was not given details of the terms of that agreement at the time, she subsequently became aware that this agreement gave Persimmon the option to purchase part of the Netherton Moor land for £9 million.

9 In late 2016, the Netherton Moor sites were confirmed in the final draft version of the Local Plan. After public consultation and examination by the Planning Inspectorate, the Local Plan was formally adopted by the Council in February 2019. Persimmon submitted a planning application to the Council in October 2019. In April 2021, the Council gave Persimmon permission to develop 250 houses on the Netherton Moor land. Persimmon exercised its option, resulting in the sale by Shirley, Robert and Andrew of a first parcel of land on 1 October 2021 for £4.5 million and a second parcel of land for a further £4.5 million which was due on 1 October 2022.

10 Julie's case is that from the late 1990s onwards Shirley made promises to her that, if farmland was sold, the proceeds of sale would be shared equally between Shirley and her five children. She says she relied on those promises by working to remove the Green Belt restriction from the Netherton Moor land and secure its allocation for residential housing development. She further says that Andrew and Robert knew of Shirley's promises and that they, together with Shirley, were aware of the steps she was taking in reliance on those promises. Accordingly, she claims that Shirley, Andrew and Robert are estopped from denying that on the sale of the farmland she and her sisters would receive with them an equal share of the proceeds of sale. This is Julie's proprietary estoppel claim.

11 Alternatively Julie claims that Shirley, Robert and Andrew knew that she would not have been prepared to spend time and money on the work that she did in removing the Green Belt restriction from the Netherton Moor land and securing its allocation for residential housing development without recompense and that, unless she is rewarded for her work, they will have been unjustly enriched. She claims as compensation a share in the proceeds of sale of the Netherton Moor land or such other compensation as the court thinks fit. This is Julie's alternative unjust enrichment claim.

12 Julie's claim was issued in May 2020. Until about May 2022 Shirley denied Julie's claim. At about that time she ceased to instruct solicitors who had represented her since the claim was issued and not long afterwards obtained permission to amend her defence by striking through her original defence in its entirety and signing a statement of truth underneath the words (in manuscript) "I admit to Julie's claim". Julie relied on a witness statement signed by Shirley in May 2022 and called her to give evidence on the third day of the trial. Although still a defendant, Shirley has not been represented in these proceedings.

13 Andrew and Robert deny Julie's claim and in particular say they were not aware of any promises made by Shirley to Julie. They accept they agreed Julie should engage Mr Hartley to provide planning consultancy services and say that she should be repaid what she paid Mr Hartley for his services. But they deny they ever agreed Julie should receive anything for her work.

14 The action came on for trial in September 2022. Over seven days I heard evidence from 11 witnesses of fact and two expert witnesses. In addition to lengthy written submissions, there was a day of oral closing submissions about two months after completion of the oral evidence. Mr Wilson Horne was counsel for Julie at trial, assisted by Mr Timothy Sherwin in the preparation of closing submissions, instructed by Charles Russell Speechlys LLP (CRS). Ms Caroline Shea KC and Mr Michael Ranson were counsel for Andrew and Robert instructed by Chadwick Lawrence LLP.

The witnesses

15 I remind myself of the caution that needs to be exercised in assessing evidence from witnesses' memories unsupported by contemporaneous documents. This is especially the case where, as here, the witnesses are giving evidence of things alleged to have been said many years ago. I have very much in mind what has been said in a number of recent authorities regarding the inherent unreliability of memory. The guidance provided in recent authority is helpfully summarised in R (on the application of Dutta) v General Medical Council [2020] EWHC 1974 (Admin) at [39]-[40]. I take from it the following propositions:

15.1 Memory is malleable by nature, is itself changed merely by the process of being revisited and is particularly susceptible to being rewritten/fabricated by the biases inherent in litigating disputes.

15.2 A witness can be honest and yet be seriously mistaken about what s/he says s/he remembers, to the point of creating "memories" of events which did not in fact happen.

15.3 A witness's demeanour tells a judge nothing about that witness's honesty or the reliability of that witness's memory, which will be inherently fallible for the reasons given above.

15.4 The best approach is to base factual findings on inferences drawn from known or probable facts and from documentary evidence.

Julie's witnesses

16 The main witnesses for the claimant were Julie herself and Shirley. I also heard evidence from the following further witnesses called by Julie:

16.1 Mr Hartley, the planning consultant retained by Julie to assist her in relation to the Netherton Moor land. Mr Hartley was plainly an honest witness, doing his best to assist the court. His recollection of events was assisted by the documents on his file.

16.2 Tom Biggins (Tom), Julie's partner since 2006 and a councillor in Shropshire since 1997. Tom had clearly lived and breathed this case with Julie since before its inception. I therefore bear very much in mind the fact that he viewed everything from Julie's perspective. Subject to that important caveat, I formed the view that Tom did his best to provide an accurate account of events as he remembered them.

16.3 Virginia, who since 2016 has lived with her husband David Boothroyd (David) in the farmhouse known as Ouselea Farm owned and formerly occupied by Shirley. They sold David's neighbouring farm in 2015 which enabled them to lend money to Shirley to enable her to move into a granny flat which forms part of the farmhouse and is where Shirley has lived since 2016. Virginia was not a witness to any of the material events. However, she was an honest and straightforward witness giving a truthful account of matters as she saw them.

16.4 David, whose parents lived within a mile of and were good friends of Donald and Shirley. His father and Donald were both dairy farmers and he and Virginia married in 1992. After Donald's death, David helped Robert and Andrew on the farm between 1992 and 2013. Like Virginia, David was not a witness to any of the material events. He too was an honest and straightforward witness, doing his best to give evidence of events as he recalled them.

16.5 Gillian, who lives with her husband Hubert in Doncaster and was a teacher for 40 years before she retired. From the time that she moved to Doncaster in the late 1970s, Shirley was her sole source of information about the farm and she rarely spoke to Robert and Andrew, meeting them infrequently on family occasions. Gillian was not a witness to any of the material events but she was plainly an honest and credible witness doing her best to assist the court.

17 Julie gave evidence for the best part of two days when her evidence was subjected to fair but forceful cross examination. I formed the view she was an honest witness, seeking to give what she perceived to be a truthful account of events of many years ago as she remembered them. She was the author of several letters and documents which I consider below in my analysis of the evidence.

Insofar as relevant, I assess her memory of events against what those documents say. Where there are no documents against which to assess her memory of events, I have very much in mind (as with all the other family witnesses) the need to be cautious in assessing the reliability of her memory.

18 Understandably, given the importance of the litigation to her, Julie had spent a considerable amount of time preparing for her evidence. For example, she prepared a document entitled "Netherton Moor land promotion activity log - 2002 to 2021" containing her estimate of the length of time she spent on the planning work she had carried out over the years. I treat with caution Julie's estimates of time spent on work done many years previously in respect of which there is no contemporaneous record. However, her account of the type of work she carried out was credible and I consider that most of her estimates of time spent, although very rough, were her best estimates and were not deliberately exaggerated. Julie also prepared what was described as a "key actions chart leading to housing allocation", the purpose of which was to assist the court's understanding of the key stages (as they appeared to Julie) of the planning process.

19 I also do not ignore the fact that Julie has a strongly held sense of grievance regarding the way in which she feels she has been treated by her brothers since childhood. She and her brothers met infrequently on family occasions over the years (when they were civil to each other) but they had little or no contact with each other otherwise. They are no longer on speaking terms, no doubt as a result of this litigation but, even before this litigation commenced, they were not on friendly terms and the evidence shows they communicated with each other only when they felt they had to do so. I have regard to the animosity clearly felt and shown between Julie on the one hand and Andrew and Robert on the other when assessing the credibility of their evidence.

20 Shirley is now 89 and was 88 when she gave oral evidence on the third day of trial. I have already referred to her original defence filed in February 2021 prepared with the assistance of solicitors (who were not Andrew and Robert's solicitors) and signed by Shirley with a statement of truth, in which she denied that she made any promises to Julie. Shirley's witness statement is dated 9 May 2022. She confirmed its truth under oath. It contains a certificate of compliance signed by a partner in Julie's solicitors. In that statement Shirley accepts that, although she cannot remember the exact words used, she made various statements to Julie along the lines that Julie alleges. Her explanation for changing her position from defending Julie's claim to supporting it was that she had previously thought Julie was seeking to benefit herself alone but had recently come to realise that Julie's efforts had been intended to benefit her sisters as well as herself.

21 Andrew and Robert point out that from the outset Julie's case was that Shirley encouraged Julie to act as she did on the express basis that it would compensate all the sisters for the perceived unfairness of Donald's will. So, they argue,

Shirley's belief that Julie was pursuing the claim for her own benefit alone was inconsistent with Julie's own evidence as to the basis on which her mother's promises had been made. There is force in that submission. However, having heard the evidence of Shirley, Andrew and Robert, I consider that Shirley's evidence as to the reason for her original defence of the claim and subsequent about turn was truthful. When Julie made her claim, Shirley was clearly relying on what Andrew and Robert were telling her about Julie's claim. Their view was (and still is) that in making her claim, although ostensibly making it "for the girls", Julie was really only acting for herself and I am satisfied they gave that impression to Shirley. Shirley reposed full trust and confidence in both her sons but particularly in Andrew, so much so that when it came to providing instructions to the family solicitor in relation to a declaration of trust she entered into in December 2016, she was content to allow Andrew to relay instructions to the solicitor which had the effect of transferring the entirety of her interest in the partnership land to her sons. The solicitor's attendance notes of conversations he had with Shirley some four years later show that Shirley had not fully appreciated the effect of signing that trust deed.

22 Andrew and Robert say there is evidence to suggest that Shirley's memory has been "severely compromised" during recent years. They rely upon a letter written by Virginia and Gillian given to Julie on 22 December 2021 which refers to Shirley "not [being] the person she was when [Julie] last saw her". The letter also refers to Shirley "struggling … to … comprehend what Andrew and Robert are doing and have done to her". This letter provides evidence of the pressure being placed on Shirley by the fact and cost of the litigation but I do not consider it provides support for the contention that Shirley's memory is severely compromised.

23 Robert and Andrew also rely on the file notes of John Oates, the solicitor, made in April and September 2020 and January 2021 which they say show Shirley asking the same question about the effect of the declaration of trust that Mr Oates had answered back in December 2016 when she signed the document. I do not regard this evidence as supporting the suggestion that Shirley's memory had been severely compromised in the period between 2016 and 2020. All it shows is that (as I find) Shirley did not fully understand the impact of the declaration of trust at the time she signed it in 2016. She thought she had signed the document for tax reasons (which she had) but did not understand that the consequence of signing the document was that she was no longer entitled to any part of the proceeds of sale of the Netherton Moor land.

24 Andrew and Robert submit that I should disregard Shirley's evidence in its entirety. They say that her evidence "taken in totality was so riddled with inconsistencies, and unanswered questions as to provenance, that it can provide no assistance at all in helping resolve the issues in dispute in this case". They rely on the fact that Shirley's response to many questions put to her in cross-examination was that she did not remember. That is true, but a careful reading of her oral evidence shows that she understood what was being asked of her and was firm in her recollection of certain matters. Her inability to recall matters put

to her in the witness box is likely in some instances to have been due to a genuine absence of recollection but in other instances is more likely to have been attributable to the difficult position she found herself in.

25 Shirley was having to give evidence in a public arena in the context of litigation which had torn her family apart. She was the matriarch of the family who had previously been the person with whom all her children had communicated on a regular basis, either through visits and daily contact from those living close by (Virginia, Andrew and Robert) or regular telephone calls from those living further away (Gillian and Julie). All her children accepted she was the conduit through whom family information was disseminated. The litigation inevitably put Shirley under considerable pressure. She was told by Andrew and Robert that she risked losing her house. Her decision to switch sides had resulted in her sons and their children no longer visiting or speaking to her. When giving evidence, she was clearly anxious to avoid making matters worse. She answered those questions which she clearly had to answer but kept her answers extremely brief. Those answers were truthful. There were some questions to which she responded by saying she could not recall where I formed the view that she had decided an absence of recollection was the safest response given the sensitivity of her situation.

26 I am not therefore prepared to accede to Andrew and Robert's submission that Shirley's evidence should be disregarded in its entirety. I have given careful consideration to the evidence in her signed statement as compared with her oral evidence. I consider the evidence she gave in her witness statement and in the witness box represented an honest attempt to convey the true position at the times she signed her statement and testified in court. I have of course had regard to the contemporaneous documents in determining what happened or is likely to have happened at particular stages relevant to Shirley's evidence.

Andrew and Robert's witnesses

27 Both Andrew and Robert gave evidence in their defence. Although the younger brother by five years, Andrew was the brother who took the lead in relation to Julie's proposal that she take steps to seek to secure the removal of the Netherton Moor land from the Green Belt. He was the brother with whom Julie communicated about the project. I do not accept Julie's submission that Andrew was a thoroughly dishonest witness. However, there were aspects of Andrew's evidence which were unsatisfactory or unreliable and I address these below when considering the facts. To take one example, Andrew's case in his defence was that Julie would only be refunded what she had paid Mr Hartley from the proceeds of sale of the land if Mr Hartley was successful, whereas in his witness statement he said they were short of cash at the time Mr Hartley was instructed but agreed to pay his bill when they "had the funds". When this difference was put to him in cross examination, he said he could not remember what he thought had been agreed in 2008. For the reasons I give below, I find that the question of whether and if so when Mr Hartley's fees would be paid by Andrew and Robert was never discussed.

28 Robert was content to leave it to Andrew to handle discussions concerning development of the Netherton Moor land and was only privy to one relevant conversation with Julie. Indeed he had little or no communication with Julie following Mr Hartley's instruction. As he said in his witness statement: "We don't see eye to eye, and we never have done". I do not accept Julie's submission that Robert was a dishonest witness. Like Andrew, he held forthright views which were expressed in trenchant terms and aspects of his evidence were unsatisfactory or unreliable which I address in my review of the facts.

29 There were two aspects of Robert and Andrew's evidence which stood out. First, their refusal to accept that Shirley ever intended to do anything other than pass her 50% share of the partnership land to them, even where that land was sold for development giving them a windfall which was way beyond anything they could have expected from sale of the land as farmland. Their case was that Shirley had made provision in her will for her house to go to the daughters and that regardless of the size of the windfall, that was all the daughters could expect to receive from Shirley. They therefore saw nothing wrong with Shirley entering into the declaration of trust at a time when there was a real prospect of Shirley's 50% interest in the land being sold for a windfall amount. Their evidence was that it was a matter entirely within their own discretion as to whether they chose to give their sisters any part of the proceeds of sale received from Persimmon. The second matter which stood out was the brothers' reluctance to acknowledge the value of the work done by Julie and Mr Hartley in securing the removal of the Netherton Moor land from the Green Belt. Robert's view of Julie was that she had a high opinion of herself and was able to "spin a story".

30 Robert and Andrew called two further witnesses:

30.1 John Oates, a solicitor admitted in 1976 who has acted for the Mate family for nearly 40 years. Mr Oates was plainly an honest witness doing his best to assist the court. He made careful file notes of his meetings and conversations with members of the family over the years. He represented Shirley, Andrew and Robert in relation to the negotiation of Persimmon's option agreement. Not surprisingly his oral evidence added little to the contents of his contemporaneous file notes and correspondence. When Julie and Tom came to see him in February 2016 after Julie became aware of the Persimmon deal, he very properly made it clear he could only pass on Julie's concerns to Shirley, Andrew and Robert and could not advise her because he was conflicted. He was presented with a more difficult conflict when advising Shirley, Robert and Andrew in relation to the declaration of trust. His notes record that he asked to speak to Shirley on her own about the effect of this document, but she told him she was happy for Andrew and Robert to be present during their discussions and to give instructions on her behalf. However, as his later file notes also record, it appears (and I find) that Shirley thought the document was entered into for tax reasons (which was correct) but did not fully

appreciate that its effect was to deprive her of any beneficial interest in the partnership land.

30.2 James Parkin of Persimmon, who has worked in the West Yorkshire division of Persimmon since 2016 and been Head of Land in that division since July 2021. I did not find Mr Parkin's evidence either reliable or satisfactory. His witness statement dated 10 May 2022, where it did not consist of referring to documents disclosed by Persimmon from their files, largely consisted of relaying a conversation he had had on 26 April 2022 with his predecessor Chris Hull who is now managing director of Persimmon's West Yorkshire division. No satisfactory explanation was given as to why Mr Hull himself was unable to give evidence. This meant that Mr Parkin could not be questioned about matters in relation to which he was purporting to give evidence on behalf of Mr Hull. Mr Parkin's lack of first-hand knowledge was highlighted by the evidence he sought to give concerning the circumstances in which Persimmon first became interested in the development potential of the Netherton Moor land. He suggested that Andrew was approached by Persimmon in "early 2013". The basis for this suggestion was a letter from Persimmon to Andrew incorrectly dated 6 February 2013 (when it should have been dated 6 February 2014). It is quite clear, as Mr Parkin was forced to concede after some prevarication, that Persimmon's first letter sent out of the blue to Shirley's home, addressed to "Mr C Mate", was dated 29 January 2014. This error is important because it demonstrated that Persimmon approached the owners of the Netherton Moor land a full 12 months after (according to Mr Parkin's account of his call with Mr Hull) they said they made that approach. Nor, given his lack of involvement at the time, could Mr Parkin give direct evidence as to the circumstances in which the development potential of the Netherton Moor land came to Persimmon's notice. He appreciated that whether or not Persimmon became aware of the Netherton Moor land through its inclusion in the SHLAA was a relevant point (because it was Julie's case that her and Mr Hartley's work had resulted in the Netherton Moor land being included in the SHLAA). Yet his evidence was that, in his call with Mr Hull, "Chris [Hull] did not mention the SHLAA" and that "if the [Netherton Moor land] was identified by reference to the SHLAA this would only form a small part of evidence which would inform our decision to take the opportunity on". Mr Parkin was not aware that a representative of Persimmon had in fact sat on the Council's SHLAA strategy committee. He was asked who that representative might have been and said it was likely to have been either Mr Hull himself or Mr Hull's colleague Gareth Lloyd. The fact that Mr Hull did not give evidence meant the court was deprived of direct evidence as to how Persimmon became aware of the Netherton Moor land. I find that Persimmon became aware of the Netherton Moor land as a potential development opportunity as a result of sitting on that committee. In view of the unreliability of Mr Parkin's evidence, I do not

accept his assertion that the Netherton Moor land's inclusion in the SHLAA only formed a small part of the matters Persimmon would have taken into account when deciding to pursue the opportunity. I have concluded from the expert evidence, as well as the evidence of Mr Hartley, that the reason Persimmon came to be interested in the Netherton Moor land was its inclusion in the SHLAA.

The expert evidence

31 Each side called an expert witness in the field of planning. This evidence was relevant to the following issues of causation and quantum:

31.1 the effect of the work carried out by Julie and Duncan Hartley on the release of Netherton Moor land from the Green Belt and its allocation for housing in the draft Local Plan. This issue has to be considered in the context of the role played by Persimmon and Andrew and Robert;

31.2 the impact of the work carried out by Julie and Duncan Hartley on the value of the Netherton Moor sites;

31.3 the value in monetary terms of the services alleged to have been provided by Julie and Duncan Hartley.

32 There were two expert witnesses. Julie called Christopher Creighton, managing director of Peacock and Smith Ltd, a Leeds based planning consultancy. Andrew and Robert called Adrian Spawforth, managing director of Spawforths, a Wakefield based planning consultancy. Mr Creighton and Mr Spawforth's reports and joint statement provided useful background information regarding the planning process and gave their opinions in relation to specific questions formulated by the court's order of 20 September 2021. Insofar as the experts disagreed, for the reasons I give below, I prefer the evidence of Mr Creighton.

The Law - Proprietary Estoppel

33 The approach to analysing a claim based on proprietary estoppel, and how any equity should be satisfied, was articulated by Lewison LJ in Davies v Davies [2016] 2 P & C.R.10 at [38] (cited with approval by the Court of Appeal in Guest v Guest [2020] 1 WLR 3480 at [47]) as follows:

> (i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: Thorner v Major [2009] UKHL 18; [2009] 1 W.L.R. 776 at [57] and [101].
>
> (ii) The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: Thorner v Major at [29].

(iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a "mutual understanding" may depend on how the other elements are formulated and understood: Gillett v Holt [2001] Ch. 210 at 225; Henry v Henry [2010] UKPC 3; [2010] 1 All E.R. 988 at [37].

(iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: Gillett v Holt at 232; Henry v Henry at [38].

(v) There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: Gillett v Holt at 232.

(vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: Jennings v Rice [2002] EWCA Civ 159; [2003] 1 P. & C.R. 8 at [56].

(vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance: Henry v Henry at [51] and [53].

(viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: Henry v Henry at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: Jennings v Rice at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: Jennings v Rice at [50] and [51].

(ix) In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: Jennings v Rice at [51]. However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a "portable palm tree": Taylor v Dickens [1998] 1 F.L.R. 806 (a decision criticised for other reasons in Gillett v Holt).

34 So the first stage of the analysis is to decide whether an equity has arisen. Robert and Andrew say that no equity has arisen for three separate reasons. First, they say that the promises or assurances which Julie says were made to her by Shirley were not sufficiently clear for Julie to have placed reasonable reliance upon

them. The law requires that the promise or assurance must be clear enough. As Lord Walker acknowledged in Thorner v Major at [56], that is a thoroughly question begging formulation since what amounts to sufficient clarity is hugely dependent on context. Taken in its context, it must be a promise which one might reasonably expect to be relied upon by the party to whom it was made.

35 Second, Julie does not claim that any of the promises or assurances on which she relies were made directly to her by Robert and Andrew. So the question arises as to whether Robert and Andrew acquiesced in or adopted whatever promises or assurances were made to Julie by Shirley.

36 It is a question of fact whether a particular defendant was aware of another's promise or assurance and acted in such a manner as to make it unconscionable for him to resile from it. Mere standing-by or acquiescence by a defendant can be sufficient for his actions to amount to an assurance. As Lord Walker said in Thorner v Major at [55]:

> …if all proprietary estoppel cases (including cases of acquiescence or standing-by) are to be analysed in terms of assurance, reliance and detriment, then the landowner's conduct in standing by in silence serves as the element of assurance. As Lord Eldon LC said over 200 years ago in Dann v Spurrier (1802) 7 Ves 231, 235–236:"this court will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on is in many cases as strong as using terms of encouragement."

37 In Fielden v Christie-Miller [2015] EWHC 87 (Ch) Sir William Blackburne had to consider the extent to which a representation by one of a number of co-owners of land can bind the other co-owners and decided the issue by reference to principles of agency. At [26] he put it this way:

> [Counsel's] fundamental proposition that where estoppel is in issue it is sufficient merely that the claimant asserting the estoppel believes that the person with whom he is dealing has the authority needed and that it is sufficient that the agent has the appearance of authority with nothing to suggest to the claimant that he does not is not one with which I am able to agree. Elementary fairness requires that before a person can be bound by the acts of another purporting to act on his behalf, that other must have his authority to bind him in the matter. Whether he has will depend on the usual principles of agency. This applies, in my judgment, as much in the field of estoppel as it does in other contexts. In the language of estoppel, there is nothing unconscionable in a person denying what another has come to believe and acted upon to his detriment if that person has not, either himself or through his agents, allowed the other to reach that belief.

38 Third, Robert and Andrew contend that the alleged promises or assurances made by Shirley to Julie were merely promises to pay money to Julie and that a proprietary estoppel claim cannot be based on a promise to pay money. They rely on Sami v Hamit [2018] EWHC 1400 where Morgan J said at [40]:

> Most of the reported cases of proprietary estoppel involve claims in relation to land but there is authority for proprietary estoppel being available in relation to other kinds of property … Nonetheless, I do not think that the principles of proprietary estoppel lend themselves to being applied in a case where the promise is simply to pay a sum of money. This is the view expressed in Snell's Equity, 33rd ed., at para. 12-036 although the contrary is argued in a learned article by Professor Macfarlane and Sir Philip Sales in (2015) 131 LQR 610 citing (at page 625) Sutcliffe v Lloyd [2007] 2 EGLR 13. In order to decide the outcome of this appeal, it is not necessary for me to consider further the possibility that the law might develop in the future in the way suggested in the LQR article. I will therefore proceed on the basis that a claim based on a promise to pay a sum of money does not lend itself to being analysed by reference to the principles of proprietary estoppel.

39 As Lord Briggs said in Guest v Guest [2022] UKSC 27; [2022] 3 WLR 911 at [4]: "The word "proprietary" reflects the fact that the remedy is all about promises to confer interests in property, usually land". Julie's case is that Shirley's promises were not to pay her a sum of money but to provide her with an interest in property, the property being a share in the proceeds of sale of the land in the event that it was sold as development land.

40 Julie relies on Sutcliffe v Lloyd, the case referred to in Sami v Hamit and commented on by the authors of the Law Quarterly Review article as follows (at page 625 of the article):

> For example, in Sutcliffe v Lloyd, the Court of Appeal held that a proprietary estoppel claim could arise even though A's promise was simply that B would, in some way, share in the profits of the development of particular land: there was no promise that B would acquire a right in relation to the land itself.

41 Sutcliffe v Lloyd concerned a business venture involving the development of land into flats. The claimant and defendants were engaged in a business together and promises were made in relation to that business. It is authority for the proposition that interests in a business venture can be the subject of relief in a proprietary estoppel claim. It was the interest in the business venture that gave rise to the right to a share in the profits.

42 Julie also referred to Moore v Moore [2019] FLR 1277. This case concerned a family farm and the partnership business run from that farm. It was held that sufficiently clear promises had been made by the father to the son to give rise to an equity in favour of the son by reason of proprietary estoppel over the entirety of the father's interest in the farm including his interest in the business. The assets of the business included cash.

43 I accept Julie's submission that, properly analysed, Shirley's promises, if made, were to provide her with an interest in property, that property being the proceeds of sale of the land. As such they were not mere promises to pay money. They were promises relating to property and how the proceeds of sale of that property

were to be dealt with. They can therefore form the basis of a proprietary estoppel claim.

44 So those are the principal matters of law to be considered in deciding whether an equity has arisen. The question then arises as to the proper approach to be taken in satisfying an equity that is found to have arisen.

45 Robert and Andrew submit that a claimant's expectation is no more than a starting point and, on the facts of this case, any equity Julie may be found to have had should be satisfied not by reference to Julie's expectation but by reference to the detriment she has suffered.

46 Julie says that this approach cannot be sustained following the Supreme Court's decision in Guest v Guest, supra, where Lord Briggs (giving the opinion of the majority) explained that "[u]nder the doctrine of proprietary estoppel the specific enforcement of the promise or assurance is the primary remedy for the unconscionability threatened or occasioned by its breach" (at [5]), because "[the previous cases] are almost single-minded in their pursuit of the enforcement of expectation" (at [26]), such that "[t]he normal and natural remedy was to hold the promisor to his promise, because that was the simplest way to prevent the unconscionability inherent in repudiating it" (at [61]). Accordingly, "this court should firmly reject the theory that the aim of the remedy for proprietary estoppel is detriment-based forms any part of the law of England" (at [71]).

47 Lord Briggs continued (at [74]-[76] and [79]-[80]):

> 74. I consider that, in principle, the court's normal approach should be as follows. The first stage (which is not in issue in this case) is to determine whether the promisor's repudiation of his promise is, in the light of the promisee's detrimental reliance upon it, unconscionable at all. It usually will be, but there may be circumstances (such as the promisor falling on hard times and needing to sell the property to pay his creditors, or to pay for expensive medical treatment or social care for himself or his wife) when it may not be. Or the promisor may have announced or carried out only a partial repudiation of the promise, which may or may not have been unconscionable, depending on the circumstances.
>
> 75. The second (remedy) stage will normally start with the assumption (not presumption) that the simplest way to remedy the unconscionability constituted by the repudiation is to hold the promisor to the promise. The promisee cannot (and probably would not) complain, for example, that his detrimental reliance had cost him more than the value of the promise, were it to be fully performed. But the court may have to listen to many other reasons from the promisor (or his executors) why something less than full performance will negate the unconscionability and therefore satisfy the equity. They may be based on one or more of the real-life problems already outlined. The court may be invited by the promisor to consider one or more proxies for performance of the promise, such as the transfer of less property than promised or the provision of a monetary equivalent in place of it, or a combination of the two.

> 76. If the promisor asserts and proves, the burden being on him for this purpose, that specific enforcement of the full promise, or monetary equivalent, would be out of all proportion to the cost of the detriment to the promisee, then the court may be constrained to limit the extent of the remedy. This does not mean that the court will be seeking precisely to compensate for the detriment as its primary task, but simply to put right a disproportionality which is so large as to stand in the way of a full specific enforcement doing justice between the parties. It will be a very rare case where the detriment is equivalent in value to the expectation, and there is nothing in principle unjust in a full enforcement of the promise being worth more than the cost of the detriment, any more than there is in giving specific performance of a contract for the sale of land merely because it is worth more than the price paid for it. An example of a remedy out of all proportion to the detriment would be the full enforcement of a promise by an elderly lady to leave her carer a particular piece of jewellery if she stayed on at very low wages, which turned out on valuation by her executors to be a Faberge worth millions. Another would be a promise to leave a generous inheritance if the promisee cared for the promisor for the rest of her life, but where she unexpectedly died two months later. …
>
> 79. I can see no principled justification for treating a perceived need to abandon full enforcement as a reason for moving straight (or at all) to compensation on the basis of an attempt to value the detriment. That would suggest something approaching a binary choice which would be alien to the flexible and pragmatic nature of the discretion. I recognise that, in a case where there is perceived to be a large gap between the respective values of the promise and of the detriment this may leave the judge with a wide range of options with little in the way of rules as a guide… where the only objection to full enforcement is that it will be out of all proportion to the detriment then the court will, in the words of Dillon LJ in Burrows v Sharp, just have to do the best it can.
>
> 80. In the end the court will have to consider its provisional remedy in the round, against all the relevant circumstances, and ask itself whether it would do justice between the parties, and whether it would cause injustice to third parties. The yardstick for that justice assessment will always be whether, if the promisor was to confer that proposed remedy upon the promisee, he would be acting unconscionably. "Minimum equity to do justice" means, in that context, a remedy which will be sufficient to enable that unconscionability question to be answered in the negative.

48 With that guidance in mind, I agree with Julie that, if the equity arises, the starting point is to satisfy the promisee's expectation by holding the promisor to the promise. If the promisor asserts and proves (the burden being on him for this purpose) that "specific enforcement of the full promise, or monetary equivalent, would be out of all proportion to the cost of the detriment of the promisee, then the court may be constrained to limit the extent of the remedy" (per Lord Briggs at [76]). In other words, if there is a major disproportion between the expectation and the detriment, the court must tailor the remedy to what is just and proportionate. In those circumstances, the "yardstick for that justice assessment will always be whether, if the promisor was to confer that proposed remedy upon the promisee, he would be acting unconscionably" (per Lord Briggs at [80]).

The Law - Unjust Enrichment

49 The test for unjust enrichment is fourfold: "(1) Has the defendant been enriched? (2) Was the enrichment at the claimant's expense? (3) Was the enrichment unjust? (4) Are there any defences available to the defendant?": Benedetti v Sawiris [2014] AC 938 at [10].

50 As with proprietary estoppel, care should be taken to avoid treating this test as a straightjacket, since "the questions are not themselves legal tests, but are signposts towards areas of inquiry involving a number of distinct legal requirements. In particular, the words "at the expense of" do not express a legal test; and a test cannot be derived by exegesis of those words, as if they were the words of a statute. … In carrying out the analysis, it is important to have at the forefront of one's mind the purpose of the law of unjust enrichment … It reflects an Aristotelian conception of justice as the restoration of the balance or equilibrium which has been disrupted. That is why restitution is usually the appropriate remedy. …": Investment Trust Companies v Revenue and Customs Cmmrs [2018] AC 275, per Lord Reed at [41]–[42].

51 As to (1) (whether the defendant has been enriched), "[t]he unjust enrichment cases involving free acceptance or acquiescence do not depend upon the service adding to the defendant's wealth; the service per se is treated as a benefit. Thus, restitution has been awarded in respect of plans prepared in anticipation of the conclusion of a contract by a developer but rendered useless when the landowner decided not to proceed…": Chitty on Contracts, 34th ed., 2022, at §32-021.

52 As to (2) (whether the enrichment was at the claimant's expense), "[i]t should be emphasised that there need not be a loss in the same sense as in the law of damages: restitution is not a compensatory remedy. … The loss to the claimant may, for example, be incurred through the gratuitous provision of services which could otherwise have been provided for reward, where there was no intention of donation. In such a situation, the claimant has given up something of economic value through the provision of the benefit, and has in that sense incurred a loss": Investment Trust Companies v Revenue and Customs Cmmrs, supra, at [45].

53 As to (3) (was the enrichment unjust), in order for the free acceptance by the defendant of the claimant's services to be unjust:

53.1 "it will be necessary for the defendant to be given sufficient notice of the impending benefit to enable a free choice to be made to refuse it": Goff & Jones: The Law of Unjust Enrichment, 9th ed., at §17-09;

53.2 "[t]he defendant must know, or ought to have known, that the claimant expected to be paid for his services": op. cit., at §17-11; and

53.3 "[w]here a defendant has had no option about whether to accept the benefit the principle of free acceptance does not apply. In other words,

> there must have been an opportunity to reject the benefit": op. cit. at §17-13.

54 As to (4) (any available defences), none of the defences to a claim in unjust enrichment are pleaded by the defendants in this case. Robert and Andrew simply deny Julie's claim in unjust enrichment.

55 If a claim is made out, a claimant's remedy, in a case such as this, will be an order that the defendant pays money. As Goff & Jones put it at §36-11: "all personal restitutionary awards should be simply described as personal orders directing a defendant to pay a sum representing the value of the benefit that he received at the claimant's expense".

56 The enrichment has to be valued at the time it was received by the defendant, the question being "what is the value of the services themselves, not of any end-product or subsequent profit made by the defendant". The claimant is entitled to damages equivalent to the objective market value of the services performed. Objective market valuation is "the price which a reasonable person in the defendant's position would have had to pay for the services" (Benedetti v Sawiris, supra, at [14], [17]).

57 If the claimant's work is sub-standard, the defendant need not make a counterclaim in respect of this. Instead (per Goff & Jones at §5-52) "the amount of the restitutionary award should be reduced, not because the defendant has a counterclaim for breach of duty, but because the claimant's work is simply worth less than it would be if it was carried out to a reasonable standard".

58 Where a defendant would have had to pay for the services by way of commission-based payment, which is a percentage amount fixed by reference to the value of the transaction in question, then that is the correct approach to valuing their services. In Benedetti v Sawiris (supra at [44]) the trial judge found that the objective value of the services provided by the claimant in his role as a broker or adviser was a fee of between 0.1% and 0.3% of the transaction value. In Way v Latilla [1937] 3 All ER 759, the claimant sought remuneration for services provided to the defendant in connection with the obtaining of goldmining concessions in West Africa. The Court of Appeal relied on the evidence of one or two consulting mining engineers in deciding that the proper award was a fee of 500 guineas. The House of Lords disagreed with this approach. Lord Atkin stated (at p.764A-C):

> … this decision [under appeal] appears to me to ignore the real business position. Services of this kind are no doubt usually the subject of an express contract as to remuneration, which may take the form of a fee, but may also take the form of a commission share of profits, or share of proceeds calculated at a percentage, or on some other basis. In the present case, there was no question of fee between the parties from beginning to end. On the contrary, the parties had discussed remuneration on the footing of what may loosely be called a "participation," and nothing else. The reference is analogous to the well known distinction between

> salary and commission. There are many employments the remuneration of which is, by trade usage, invariably fixed on a commission basis. In such cases, if the amount of the commission has not been finally agreed, the quantum meruit would be fixed after taking into account what would be a reasonable commission, in the circumstances, and fixing a sum accordingly. This has been an everyday practice in the courts for years. …

59 Both parties relied on the House of Lords decision of Cobbe v Yeoman's Row Management Ltd [2008] 1 WLR 1752, a case where the claimant's claims in proprietary estoppel and constructive trust failed but the court held that the claimant was entitled to succeed in his claim for unjust enrichment and to have his services valued on a quantum meruit basis. Lord Scott considered the role of the grant of planning permission in the context of an unjust enrichment claim at [40]- [41]:

> 40. There is no doubt but that the value of the property will have been increased by the grant of planning permission and that the defendant company has, accordingly, been enriched by the grant of the permission for which it has had to pay nothing. Since the planning permission was obtained at the expense of [the claimant] it is very easy to conclude that the defendant company has been enriched at his expense and, in the circumstances that I need not again rehearse, unjustly enriched. So, in principle, he is entitled to a common law remedy for unjust enrichment.
>
> 41. But what is the extent of the unjust enrichment? It is not, in my opinion, the difference in market value between the property without the planning permission and the property with it. The planning permission did not create the development potential of the property; it unlocked it. The defendant company was unjustly enriched because it obtained the value of [the claimant's] services without having to pay for them. An analogy might be drawn with the case of a locked cabinet which is believed to contain valuable treasures but to which there is no key. The Cabinet has a high intrinsic value and its owner is unwilling to destroy it in order to ascertain its contents. Instead a locksmith agrees to try to fashion a key. He does so successfully and the cabinet is unlocked. As had been hoped, it is found to contain valuable treasures. The locksmith had hoped to be awarded a share of their value but no agreement to that effect had been concluded and the owner proposes to reward him with no more than sincere gratitude. The owner has been enriched by his work and, many would think, unjustly enriched. For why should a craftsman work for nothing? But surely the extent of the enrichment is no more than the value of the locksmith's services in fashioning the key. Everything else the owner of the cabinet already owned.

60 Robert and Andrew rely on Lord Scott's locksmith analogy in submitting that the extent of the enrichment resulting from Julie's provision of her services is not measured by reference to the difference in market value between the property without the planning permission and the property with it but by reference to the value of those services (i.e. in fashioning the key). Julie agrees. She submits that the right approach in all cases is to value the services objectively by identifying "the price which a reasonable person in the defendant's position would have had to pay for the services" (Benedetti v Sawiris, supra, at [14]). She further submits,

relying on Way v Latilla, that where those services are valued on a commission basis by reference to the increased value of the property, that is the only permissible approach.

61 Thus Julie submits that, if the locksmith's services were correctly valued by way of commission by reference to the value of the property in the safe, then that would be the correct method of valuation. However, since locksmith's services are not typically so valued, the locksmith analogy is of no assistance in this case. She further submits that it is common ground between the experts that the correct method of valuation is by commission fixed by reference to the uplift in the value of the land, taking into account the risk of an unsuccessful outcome. She says there is no evidential basis for Robert and Andrew to contend that Julie should be awarded only the time-costs of her services, when on the experts' evidence, this approach does not acknowledge the value of the work that she undertook.

The facts

The period prior to Donald's death

62 Netherton is a village some two miles south-west of Huddersfield town centre. Donald purchased the land and buildings comprising Fold Farm in Netherton from his father and uncle. The business was called D Mate at that time. The then farmhouse, now known as 28 Netherton Fold, is where Donald's parents lived, and Robert now lives. Following his marriage to Shirley in 1954, Donald purchased Ouselea farmhouse (also known as 80 Lea Lane) in Netherton in which he and Shirley raised their family and carried on a farming, milk bottling and milk retail business in partnership. The farmland was owned and rented by a combination of Donald on his own and by Donald and Shirley jointly.

63 From an early age all the children helped their parents by working on the farm. There is a dispute as to the extent of the work done on the farm by Julie and her sisters, as compared with the work done by Robert and Andrew. Julie's evidence, which her brothers strongly disputed, was that throughout her childhood she worked just as hard on the farm as her brothers. This dispute is irrelevant to the issues I have to decide. What is clear however is that all the children were expected to and did work on the farm before and after school, assisting their father with feeding the livestock, bottling the milk and helping out with the milk rounds. It was strenuous work. As Shirley and Andrew both said, Donald was a bit of a slave driver. As well as looking after the children and running the home, Shirley had a number of farm jobs including delivering milk, bottling cream in the dairy and feeding livestock. She also did many of the administrative tasks including preparing the accounts.

64 Julie's evidence was that she and her father talked a great deal about the farm and in the mid to late 1970s, when she was in her late teens, her father broached the subject of her coming back to live on the farm after she had finished her

studies. The suggestion was that she should move into a property on the farm. However, those discussions, which only took place between Julie and her parents, did not progress and the property suggested by Donald was later sold by him.

65 According to Julie, her interest in the farm did not go down well with her brothers because the culture at the time was that it was only sons, not daughters, that would take over the family farm. She said she often felt intimidated by her brothers who made it quite clear they did not want her to stay on at the farm. She was accepted to study Animal Science at university in Autumn 1979. She gave evidence of two incidents that took place that year, when she was 19, which caused her never to feel safe alone with Robert or Andrew. The first was when Andrew, then aged 17, drove the Land Rover straight at her in the farmyard. The second, shortly before she left for university, involved Robert, then aged 23, putting his hands around her throat in the kitchen at the farmhouse and saying "you're not coming back", meaning she was not to come back to the farm after university. Although Robert and Andrew denied or did not recall these incidents, I accept that they occurred. I also accept that from at least this time, and probably before then, the relationship between Julie and her brothers was strained, caused in part by the interest which Julie had shown in the farm and the brothers' determination that she should not be involved.

66 As a result, Julie did not become involved in the farm and instead has pursued a career in various jobs connected with the agricultural industry. After university, she worked for five years in Ipswich as a journalist for the Dairy Farmer magazine. She then worked in PR as a senior executive in roles for dairy companies and dairy cooperative clients as well as for two national farming organisations, the National Farmers Union and the Country Land and Business Association (CLA) representing the interests of English farmers and growers. As a Nuffield scholar (awarded to study 'New Technologies in Holstein Cattle Breeding' in 1987), a Churchill Fellow (awarded to study Change Management in Farming in 2004) and a former board member of the Nuffield Farming Scholarships Trust, Julie was also the founder of a national mentoring programme for Nuffield farming scholars and is a member of several industry business forums, including Women in Farming and Meat Business Women. Having met Tom in 2006, they now live on his arable and livestock farm in North Shropshire and Julie runs a small herd of red deer, selling farmed venison to Waitrose and M&S.

67 Robert and Andrew both spent three years at agricultural college from the age of 17 and then came back to work on the farm. I accept their evidence that from an early age they regarded this as their destiny because Donald gave them the clear impression that he expected them to return to the farm. An attendance note of Mr Oates made on 7 February 1992, shortly after Donald died, records that Robert and Andrew were "taken into partnership with effect from November 1990".

Donald's will

68 Donald worked hard throughout his working life and built up the farm so that by the time of his death he owned land (most of it jointly with Shirley) totalling around 140 acres and the partnership rented about as much again. His death aged 66 from a heart attack in January 1992 was unexpected. Andrew was then nearly 30 and Robert was 34. Robert's evidence (which was not challenged) was that when Donald died, he (Donald) had the sole ownership of properties at 20, 22, and 24 Netherton Fold; 7.82 acres of land at Netherton Fold (a former railway goods yard & line); and 5.23 acres of land at Netherton Moor. He also had a half share (the other half belonging to Shirley) in 27 and 28 Lower Hall, Healey Houses, South Crosland; 26 and 28 Netherton Fold; 76 and 78 Lea Lane, Netherton; 80 Lea Lane, Netherton (the family home, also known as Ouselea farmhouse); 78.36 acres of land and farm buildings at Netherton Fold; 37.49 acres of land at Netherton Moor; and 12.07 acres of land at Linthwaite.

69 Donald left his share of the farm business to Shirley, Andrew and Robert in equal shares and his share of the land that he and Shirley held as tenants in common in equal shares was left to Andrew and Robert in equal shares, resulting in Shirley owning 50% of that land and Andrew and Robert each owning 25%. This meant that Andrew and Robert each inherited a 25% share in the 78.36 acres of land and farm buildings at Netherton Fold, the 37.49 acres of land at Netherton Moor; and the 12.07 acres of land at Linthwaite (the remaining 50% share continuing to be owned by Shirley). Andrew and Robert also inherited from Donald in equal shares the 7.82 acres of land at Netherton Fold and the 5.23 acres of land at Netherton Moor that had formerly been in Donald's sole ownership.

70 Donald left Shirley his share of Ouselea farmhouse (80 Lea Lane) where she now lives with Virginia and David as well as four cottages at 76 and 78 Lea Lane and 27 and 28 Lower Hall.

71 After Donald's death, Andrew and Robert bought 4 acres of land at Healey Houses and 1.86 acres of land at Netherton Moor (part of the Netherton Moor land). They have since sold the 12.07 acres of land at Linthwaite, 3 acres at Wood Bottom, and 3 acres at Netherton Fold.

72 Donald left his daughters, including Julie, the sum of £36,000 in equal shares payable by 10 equal instalments. This provision was varied by a deed of variation dated 10 December 1993 in order to substitute the legacy of £36,000 with a gift to the three of them of three terraced cottages in equal shares. (Gillian and Julie's cottages were subsequently purchased by Virginia and David). This deed of variation was required because the farm partnership had insufficient funds to pay the legacy to the daughters. Separately from the deed of variation, Gillian and Virginia each received £20,000 as, prior to Donald's death, Julie had received about £21,000 from her parents as a deposit for a flat.

73 Julie was not happy about the terms of her father's will. She said that in comparison with the two sons, it felt as though the daughters had only been given token recognition. In her view, it meant the sisters were subsidising their

brothers so that they could have a life on the family farm which was something she was not given the opportunity to pursue. Her instinct was to challenge the will but she did not know how or whether it was possible to do so and she never took advice as to the prospects of making a successful challenge.

The farm after Donald's death

74 According to Andrew, the 1990s were the best decade for the farm. He bought a new Land Rover and tractor and in 2002 built an extension onto his house. They had the school milk contract and things were so good they were able to add to their pensions. However, thereafter, the farm business started to go downhill. Julie, who had regular Sunday morning telephone calls with her mother, picked up from Shirley during those calls that her brothers did not find it easy to work together, leading to the farm business being split into milk processing/retailing run by Robert and the dairy herd and land management being run by Andrew. It was Andrew's evidence that from 1992 he ran the farming side and Robert ran the processing and the milk rounds. He said that although he and Robert had never been particularly close, they always saw eye to eye on business things. The milk retailing (bottling and milk rounds) business stopped in 2005, with milk being sold wholesale until 2007 after which milk production ceased completely, with dairy cows being replaced by beef animals.

75 Julie's evidence is that she became aware from her conversations with Shirley during that period that the profitability and income from the farm business were in decline and, to help balance the books and pay themselves a wage, Andrew and Robert began trying to inject capital into the farm by selling land as well as livestock which had previously formed the basis of the farm's breeding herd. Andrew confirmed in cross-examination that there was a downturn in the farm's financial output through the 2000s and the business started to struggle from 2011 onwards.

76 Julie was aware from her own jobs at the time how some farmers were addressing their falling incomes through off-farm employment, farm diversification, as well as land and building development. She says she gave Shirley a number of new business suggestions for the farm, including opening up a farm shop on the Fold Farm site, setting up a farm contracting business to service local farmers, renovating old buildings for sale or rent and changing the use of the cubicle house to large volume storage but there appeared to be no appetite for diversification or development at the time she made those suggestions.

Shirley's alleged promises

77 Julie says that, from the late 1990s, Shirley made promises to her that, if it came to the sale of family land or property, the proceeds would be shared with her five children, namely the three daughters and two sons. She says that Shirley was always generous but she did expect her to keep some money back for herself, although she did not know how much. She says she understood Shirley's promises to mean that the proceeds would be divided up equally between her mother and her five children, irrespective of who owned what. She says the promises were made to her when they visited one another, or over the telephone during Sunday

morning catch up calls and they were repeated over the years.

78 Julie said she has revisited her diaries from the time and can recall the following specific conversations, although she says there were many more such occasions. She confirmed that none of these conversations was recorded or referred to in any of her diaries. The diaries simply acted as a trigger for her memory of a particular conversation. I refer to these conversations as "the alleged specific promises":

78.1 She remembers that on 8 May 1999, at a time when Shirley was staying with her to help take care of her following a bad riding accident, the conversation turned to the family farm and Julie's part in it. According to Julie, Shirley said to her: "I can't see it right now. But if anything happens to the farm, then the girls would be looked after. Any sale would be shared".

78.2 The next occasion Julie recalls is on Christmas Eve 2003 when she visited Shirley at 80 Lea Lane and was in the kitchen talking about her college friend who was developing his redundant pig buildings and a small acreage of land to raise capital to pay out his two brothers and sister. According to Julie, she suggested that redundant buildings at Fold Farm should be sold off for housing to be able to pay the girls, to which Shirley responded: "I've already said, if it comes to the sale of the farm, the money would be shared with the girls. You would be treated the same".

78.3 Then on 22 February 2004, during a call with Shirley prior to the funeral of a relative, Julie referred to another farming friend of hers who had obtained planning for 30 acres of farmland in Berkshire which he was selling for "a staggering" (Julie's description) £1 million per acre. She said the land on Netherton Moor was the obvious place to start, as it did not affect the main farm site or valley land. She asked Shirley if Robert or Andrew had made any development plans for the farm to which Shirley replied: "You know what they're like. Why don't you have a word and see if you can steer them in the right direction?". Julie agreed to do this but said she was not doing the work "for nowt" and any money would need to be shared out properly to which Shirley responded "I know that. Any money will need to be shared with the girls".

78.4 Lastly, Julie gave evidence of a telephone call on the speakerphone with Shirley some 16 years later on 30 March 2020 where Tom was listening in and they talked about Julie's claim (which had already been the subject of pre-action correspondence and was issued some six weeks later on 14 May 2020). According to Julie, Shirley said on this call she really didn't know what all the fuss was about as everybody had agreed that whenever the farmland was sold it would be shared equally with her children. She therefore couldn't understand why she was receiving letters from Julie's solicitors.

79 Julie says that it was on the basis of Shirley's promises that from 2002 onwards

she began to research the potential for residential development in parts of the family farm. She says her sole purpose in doing this research was to increase the value of the farmland significantly, so that the windfall could be shared with the girls as well as the boys. Between 2002 and 2007 she was working for the CLA and she says that through that organisation's planning department and their advisers she picked up useful information about successful residential development and began to pull together a file of planning materials, including a number of Green Belt case studies. She visited a number of development sites on farms located in Hampshire, Suffolk, Berkshire and Oxfordshire.

Family funeral in March 2004

80 It was at tea following the funeral of a cousin of Donald's on 4 March 2004 that, on Shirley's suggestion, Julie says she "plucked up the courage" to share her ideas with Andrew and Robert. They started by talking about the poor state of the dairy industry and the decline in milk prices. Julie says she could see that her brothers were struggling financially and had difficulty seeing a way out of the situation. She mentioned her conversations with Shirley about how other farmers were finding solutions to falling incomes by developing their land and buildings and selling it for housing. She said her work with the CLA gave her experience of farmers, including those whose farms had Green Belt restrictions, who were selling land for residential development to raise considerable capital sums. She referred to farming friends who had sold land for housing for £1 million an acre and while she was not sure that figure could be achieved, if she could get the land out of the Green Belt with permission for houses to be built, it ought to be a substantial amount. She told them Shirley thought it was a good idea, as it was a way they could all benefit, and that it was "about time we girls were getting something". She referred to the file of information she had started to build up and the useful contacts she had made through her work for the CLA which included planning consultants.

81 According to Julie, Andrew and Robert were interested in what she had to say and asked her to provide further information and make some recommendations. Robert agreed that this funeral tea conversation took place. It was his evidence that Julie offered to try and release the Netherton Moor land from the Green Belt and said she didn't want anything out of it and only wanted them to pay for a consultant which they agreed to do after they had sold the land. Robert said that at the time they had financial problems, "not severe but things weren't looking too good". It was in that context that they accepted Julie's offer to try and release the land from the Green Belt.

82 Andrew said that his wife Carol recalled Julie talking about "doing things" at this funeral but, as he confirmed in cross examination, he did not even remember talking to Julie on that occasion. In cross examination, he said he didn't take what Julie said with a great deal of meaning or interest because "it didn't mean owt" to him. She struck him as a bit of a salesperson trying to sell him something.

83 I find that this conversation at the funeral tea in March 2004 took place in essentially the terms described by Julie. The reason why Julie found it necessary to pluck up the courage to have this conversation was because they were not close as siblings, they rarely communicated with each other and she could not be sure how her brothers would react to her suggestion. I accept that she was encouraged by Shirley to broach the subject with her brothers and that she did so because she saw it as a way in which she and her sisters could benefit from any windfall that resulted from the grant of planning permission for housing on the Netherton Moor land. I do not accept Robert's evidence that Julie told her brothers she didn't want anything out of it except reimbursement of consultancy fees. I find that Julie said to her brothers in the course of this conversation that it was "about time we girls were getting something" or words to that effect. That was as far as the conversation went. Neither Shirley nor Julie in their discussion of the matter beforehand nor Julie herself in her discussion with her brothers at the funeral tea were specific as to the manner in which any windfall might be shared. There was no reference, for example, to Shirley and each of the siblings receiving an equal share of any sale proceeds.

Julie's letter of 25 March 2004

84 Julie followed up on her conversation with Andrew and Robert at the funeral tea with a letter addressed to her brothers and Shirley dated 25 March 2004. In this letter (headed "Some background info, some contacts, some thoughts…") she recommended that they undertake considerable homework and avail themselves of the very best advice regarding potential development of the farm. She gave them the names of two land agencies both of which had specialist consultants dealing with farm development and she listed four examples of friends who were in the early stages of development on their farms, all of whom she said could be contacted or visited to help find the best way forward. She referred to the fact that Robert and Andrew had told her (presumably at the funeral tea) they had already been approached by a developer which meant that "the potential for the Fold Farm site is definitely there". She said that two land agents offered some very basic advice which was (1) to work out their strategy to the developer (i.e. a well-known, national housebuilder such as Wimpey, a regional housebuilder or a small-scale operator/speculator); (2) to advertise the site for development in order to bring in other developers or be proactive and approach other developers; (3) to carry out a beauty parade of developers, asking three or four to come forward with proposals; or (4) to undertake the development themselves which would mean sourcing architects, builders and other suppliers, not to mention finding the funds to fuel it. She said this basic advice simply covered in outline what needed to be considered and could - in theory with "some legwork" - be undertaken independently. She pointed out that identifying the potential through a detailed and informed planning audit and the drawing up of contracts/option agreements would be a quite different matter and require specialist help and advice. She promised to send them later the following week more information from the CLA's own planning department

and from the planning proposal work she had done for the United Milk processing plant.

85 Julie's letter of 25 March 2004 did not receive a reply from any of Robert, Andrew or Shirley. Robert remembered getting Julie's letter but was content to let her just get on with it, if that's what she needed to do to get the land out of Green Belt. Andrew said in his witness statement that he remembered Julie's letter only for the fact that it was "stating the bleeding obvious" and dismissed it. In cross examination, he drew back from that evidence and accepted he did not himself have any understanding of the steps that needed to be taken in order to get the land out of the Green Belt and what Julie's letter said to him was that a professional person needed to take those steps. He was not prepared to accept Julie had some knowledge about these matters. In his words, "she was good at talking about things … but it didn't mean that she knew about them". He accepted that the contents of Julie's letter were not stating the "bleeding obvious". What he meant in his witness statement was that it was "bleeding obvious" to get the land developed because it would be worth a fortune.

Julie's job with Rural Solutions - late 2007

86 There was then a gap of over three years, between mid 2004 and late 2007, when nothing happened. Julie attributed this inactivity to a combination of pressures of her work with the CLA, a 12-month illness and a house move.

87 In November 2007, after being made redundant by the CLA, Julie started a new job as a consultant in marketing and communications with a national planning consultancy called Rural Solutions. Although she only worked with Rural Solutions until February 2008, she says that it was through this job that she came to understand the only effective way to achieve residential development on Green Belt land was to remove the Green Belt designation by working through the local authority's Development Framework, also known as the Local Plan. She became aware that all local authorities in England and Wales are required to have a Local Plan to guide development over a 10 to 15 year period and that, to stand any chance of influencing the process, it was important to engage with the process from the beginning, which meant putting Green Belt land forward for development at the right time, getting it recognised by the Council officers as being suitable and available as part of the SHLAA, and thereafter doing everything possible to secure the inclusion of the Green Belt land in the Local Plan. She realised it was crucial to engage a professional planning consultant who was familiar with the process.

88 Julie's new job at Rural Solutions prompted her to raise again with Shirley in late 2007 the idea of assisting the family by suggesting development of the Netherton Moor land. Shirley was keen on the idea and encouraged Julie to look into the position further. Julie did not speak to Andrew or Robert at that stage. She believes that Shirley will have discussed her conversation with Julie with

her other children since Shirley was the person through whom family information was disseminated and she had no reason not to do so.

The recommendation of Duncan Hartley

89 In early 2008, Julie carried out some initial research regarding the Council's LDF and sought to identify a suitable planning consultant. In early April 2008 Julie contacted Roger Tempest, the former owner of Rural Solutions, for his advice and the name of any specialist planning consultant he might recommend. Roger Tempest recommended Duncan Hartley of Hartley Planning Consultants. Apart from having the right skills and experience, Mr Hartley was a former Chief Planning Officer at two Yorkshire Councils and knew the planning team well at the Council. Mr Hartley contacted Julie by email on 28 April 2008. Julie replied the following day by email as follows:

> By way of background, the farm … was entirely dairy and dairy processing until a year ago, when low milk prices and a very competitive retail market, forced my two brothers out of milk and to go into beef finishing 'only', as well as to rethink the future of the farm.
>
> We have subsequently obtained planning for the redundant farm buildings and dairy at Fold Farm, but see our biggest challenge and financial gain being the development of our land at Netherton Moor (please see attached map and area marked in yellow).
>
> The land is all grass (for winter silage) and has an ironic history, as the Council compulsory purchased a large acreage around 20 years ago to build council houses. What happened is that they did build a number of council houses and a care home, but then subsequently sold a significant percentage of the land to builders for private housing.
>
> As you will see from the PDF, a substantial area remains which has superb road access. The family owns most of it (marked in yellow) …
>
> I fully appreciate the land is not earmarked for development, but knowing the area and the land which is currently down for development in the Kirklees area, I think we can put together a very good case, or at least start the ball rolling in the right direction for planning in the medium term.
>
> The link to the Kirklees Council planning Portal and to UDP information, respectively, are as follows: … Although, this material looks well out of date.
>
> I would be grateful for your initial thoughts.

90 On 2 May 2008 Mr Hartley responded by email setting out his thoughts on the site, the process to follow in seeking to secure a housing allocation through the LDF process and how he might be able to assist. He recommended pursuing housing allocation of the land Julie had identified (i.e. the Netherton Moor land) and explained that he had spoken to the LDF's team at the Council in order to check on timescales for key documents, one of which was the SHLAA on which work was due to start very shortly. He pointed out that, in addition to the SHLAA, a number of other documents would require analysis to support the goal of a housing allocation, for example an urban capacity study, annual

housing land availability assessment and housing needs assessment. Mr Hartley suggested submitting the site to the Council's LDF Team at that stage in order to ensure the site was in their database for consideration when they came round to do detailed site assessments. This would require a letter with a short supporting statement and accompanying plan which Mr Hartley estimated would take 20 hours' work at an hourly rate of £100, including a site visit and a meeting with Julie and her family as well as a visit to the Planning Office.

91 In May and June 2008 Julie liaised with Shirley over the telephone and with Andrew over the telephone and by email, providing them with background details about Mr Hartley with a view to organising a meeting and site visit. Both Andrew and Shirley agreed with Julie that a family meeting with Mr Hartley at the farm would be a good idea. Provisional dates for a meeting were first put forward for 20 and 21 May 2008, but the meeting was rescheduled to take place on Monday, 23 June at Ouselea Farm, Shirley's home.

Julie's letter to her sisters

92 On 27 May 2008, Julie sent a letter to Virginia which stated as follows:

> Apologies for sending you this letter out of the blue and rather than making a phone call … But it will help to set the scene, start the discussion (at last) and also avoid some fairly very deep emotions.
>
> Better late than never, I have decided to tackle the thorny subject of inheritance as it relates to 'us three'(i.e. yourself, Gillian and myself) - but hopefully in a positive way!
>
> By way of a little background, I had almost resolved myself to the fact that 'we' were not going to inherit anything like our entitlement reference equal sibling shares of the farm. But older, wiser and not being in the best of health, has caused me to review this inequality.
>
> In addition, I have only recently learned that Gillian feels very strongly about the inheritance situation and has been particularly concerned by Robert's appropriation of mother's house - which, rather worryingly, seems to have been accepted by mother.
>
> To be extremely blunt, given the value of the farm - when dad died, but particularly now - we three have been extremely badly done to. You can call it the outcome of a male-dominated farming tradition, bloody mindedness, or simply male chauvinism - whatever it was, and with no disrespect to dad, it really doesn't wash nowadays.
>
> Our combined inheritance back in 1993 barely reaches 10% of the valuation of the farm and today it would barely reach 5%! Is this fair? Well, not according to those who regularly deal with succession or farm inheritance.
>
> Given the fact that at college all of my female farming contemporaries were due to receive equal shares with their brothers - this should have set alarm bells ringing in my 20s.
>
> It is apparent now that we really should have contested the will - on the grounds that it was completely inequitable and, indeed, that 'we' were all net contributors to the farm in our youth and whilst growing up, having all had to work on the farm.
>
> For myself, I know that I also had a great interest on taking on some part of the

businesses, which I still feel very strongly about today.

However, there might just be a way that we could restore 'some balance'.

For the last five months, I have been working for a land development company and have had it confirmed to me that 'the farm' has great potential for development, particularly being located so close to suburbia. In particular, the signage land on Netherton Moor (part of which was compulsory purchased for houses over 20 years ago) looks like it has been earmarked for development some time ago, but because it wasn't pursued in the interim, it doesn't figure in the 'current development plan'.

My proposition to mother - who is a shareholder in Donald Mate & Sons and should still have some say in land ownership matters - was that we should pursue the development of this land without delay and engage a consultant to develop a case for its inclusion in the local plan, in the hope that one day (in the short or medium-term) we could get residential development and sizeable payback on it.

The rationale is very simple:

- it is not grazing land which can be reached within the farm envelope
- it is 'replaceable' land which is not critical to the farm business - i.e. there is plenty of grassland about (locally and further afield) which can be rented for silage making purposes, or for grazing

Given the current per acre value of land for housing, the return from the sale of the land would be very substantial. It would get our brothers out of their 'business hole' that they seem to have ended up in. It would set them up for life. Indeed, it would even pay for new farms if they wanted to farm on a bigger scale.

In addition, however, it would also allow mother to 'balance the inheritance books', so to speak, by giving us each a share of the land sale proceeds.

The development of the Moor is considered to be a short- to medium term build plan - particularly given the recent downturn in the housing market. But the two consultants that had been recommended to me (one of which has already carried out work with Kirklees planning department) say the potential is definitely there, and they are most surprised that we have left the pursuit of its development for so very long.

I think the enclosed initial email correspondence is self-explanatory, but the first step is to make Kirklees aware that we would like the land to go for development, to provide them with a strong case for its development role (the role of the consultant), and to get it into the next five-year local development plan.

I spoke to mother about the potential of the land some weeks ago. She subsequently spoke to Andrew, who agreed it was worth looking into and said to get on with it.

I hope this letter puts you in the picture.

Needless to say, I anticipate quite a lot of resistance from said brothers to anything I put forward - and even mother. But if she could only put herself in our position, and attempt to tip the balance a little in our favour, then it would have been all worthwhile.

I should like to point out that have no regrets in tackling this issue now. It is woefully 'late in the day' but it really should be addressed before we are all too old - and bitter - (or in our graves) to sort it out.

For myself, my head injury is again causing me grief. A recurrence of seizures over the last five months means that I'm currently unable to hold down a full-time job. On the upside however, it does allow me the freedom to help Tom with his political campaign - as well as to pursue the proposed land development.

Let me know what you think.

93 In their written closing, Andrew and Robert refer to this letter as the "even mother" letter. Julie recalls that she also sent a letter to Gillian at this time which is likely to have been in similar terms but no copy was retained. I shall refer to this letter as "Julie's letter to her sisters".

94 A number of things come across clearly from Julie's letter to her sisters. First, Julie still felt extremely aggrieved about the terms of her father's will some 16 years after his death and was keen to find a way in which the sisters might restore 'some balance'. Second, Julie had by that stage put a "proposition to mother" concerning the development of the Netherton Moor land on the basis that Shirley was "a shareholder in [the partnership] and should still have some say in land ownership matters". Third, as Julie saw it, the substantial return achieved by the sale of the land for housing would not only get her brothers out of their 'business hole' but would allow Shirley to 'balance the inheritance books' by giving each of her daughters a share of the land sale proceeds. Fourth, Julie had spoken to Shirley about the potential of the land "some weeks ago" and Shirley had subsequently spoken to Andrew who agreed it was worth looking into. Fifth, Julie anticipated "quite a lot of resistance" from her brothers to anything she put forward, and even from Shirley, but if only Shirley could "put herself in our position, and attempt to tip the balance a little in our favour, then it would all have been worthwhile". Andrew and Robert say that if Shirley had made promises to Julie in the terms now alleged before she sent this letter to her sisters, Julie would have been sure to mention them.

Julie's contact with Andrew on 17 and 20 June 2008

95 Julie spoke to Andrew on the telephone about three weeks later on 17 June 2008 to discuss the meeting due to take place the following Monday and to explain what Mr Hartley was looking to find out from the meeting and was planning to do afterwards. She told him that Mr Hartley was offering a discounted hourly rate for his time of £100 per hour. She knew from conversations with Shirley that money was tight within the farm business and from general conversations with the family that her brothers were not accustomed to paying for professional help. So she told Andrew that she would pay for and organise Mr Hartley's work to which Andrew agreed.

96 According to Julie, towards the end of this conversation, she said words to the effect of "If he [Duncan Hartley] makes a success of it, we would all be better off, particularly us girls, as we're all struggling" to which she recalled Andrew replying: "Alright. I know what you're saying".

97 Andrew had no recollection of this telephone call. He only recalled the meeting which took place six days later. He denied that Julie mentioned them all being

better off if Mr Hartley was successful and him acknowledging this. However I accept Julie's evidence on this point. It is clear from Julie's letter to her sisters written shortly before this conversation that she saw her attempt to unlock the development potential of the Netherton Moor land as a means of "tipping the balance a little" in the daughters' favour following what she perceived as the unfairness of Donald's will. It is likely that she made reference to this point in her telephone conversation with Andrew in the non-specific terms (i.e. they would "all be better off") she recalls. Given the difficult relationship she had with Andrew, it is also likely that she did not specify in the course of this conversation what share of the proceeds of sale she and her sisters expected to receive and indeed Julie did not claim that she did.

98 On Friday 20 June 2008 Julie sent Andrew an email confirmation of the meeting with Mr Hartley due to take place the following Monday. She pasted into her email copies of two of Mr Hartley's emails, thereby providing Andrew with information about what Mr Hartley was looking to learn from the meeting, about his experience and terms of business and about how the LDF process worked and what actions he recommended for the Netherton Moor land.

The site meeting with Mr Hartley on 23 June 2008

99 The meeting took place as planned on 23 June 2008. Julie and Duncan Hartley met with Shirley, Andrew and Robert at Ouselea Farm. The meeting started with a discussion around the large dining table in Shirley's front room. Julie led the meeting and Mr Hartley recalls that one of the brothers, which I find was Andrew, asked the most questions. They looked at the plan which Mr Hartley had bought with him and he gave them his assessment of what would be required to get the land released from Green Belt and allocated for housing development. He explained there were a number of important pieces of Council research that would also guide the housing allocations, a key one being the SHLAA which ultimately led to the decision making on which sites were to be allocated. He said that work was due to start on this very shortly.

100 Julie recalls Andrew asking Mr Hartley what the likelihood was of him being successful and how long it would take and Mr Hartley's response being that it would not be a straightforward or easy process and was likely to take a long time but that he thought the Netherton Moor land had potential and it was definitely worth having a go. He recommended submitting the site to the LDF team at the Council straight away to ensure it was in their database for consideration when they came to do detailed site assessments.

101 After this discussion in Shirley's house, Julie drove Mr Hartley, Andrew and Robert to Netherton Moor where a number of stops were made at different locations to get a feel for the topography, the road network and accessibility to existing services.

102 At one of the stops (which Julie recalls was on the grass verge across the road from Hinchliffe's farm entrance on Netherton Moor Road where they were pointing out to Mr Hartley the two fields they did not own which split up the Netherton Moor land), Julie recalls being in conversation with Robert when Andrew (not in earshot) was stood on the other side of the road. She says she mentioned a friend of hers near Reading who had been able to get £1 million an acre for his farmland and said, "I'm not sure we'll get that, but if he [Mr Hartley] can get it out of Green Belt for housing, we'll all be a lot better off". She told him that Shirley had been at her to get on with this for a while and that she "would be doing it for the girls, not just the boys" to which Robert replied: "Yes, I know that". Robert remembers that they stopped at that location but has no recollection of what was discussed.

103 I accept Julie's evidence on this point. It is consistent with her desire as expressed in her letter to her sisters to tip the balance a little in favour of the sisters. She does not say that she discussed with Robert the fact that the sisters were looking for an equal share of the proceeds of sale. I find there was no discussion between Julie and Robert as to how any windfall would be apportioned. Robert's acknowledgement was similar to that given by Andrew to Julie in their telephone call a few days before, namely, that the sisters could expect to receive an unspecified share of the sale proceeds if the land was sold for development.

104 After the site visit, Julie dropped Robert back at the house, and took Mr Hartley and Andrew to Castle Hill to get a bird's eye view of the Netherton Moor site. They then returned to the house and, after Mr Hartley had gone, Julie asked Andrew whilst they were in the car what he thought about Mr Hartley and his planning proposals. Andrew said Mr Hartley seemed to know what he was talking about and would probably do a good job and it was definitely worth doing. After this discussion with Andrew, Julie reported back to Shirley. She said that Andrew and Robert were both behind the idea of trying to get the Netherton Moor land out of the Green Belt so it could be developed and Andrew was happy with the work that Mr Hartley had proposed and had agreed that Julie would pay for it. Shirley agreed that Julie and Mr Hartley should start on the planning work straight away.

Payment for Mr Hartley's work

105 There is an issue as to whether Andrew and Robert agreed with Julie to pay Mr Hartley's fees regardless of whether or not he was successful in extracting the Netherton Moor sites from the Green Belt or whether they only agreed to pay those fees if he was successful in doing so. I do not consider the matter was expressly discussed between them. Julie agreed to fund Mr Hartley's work and the question of whether she was entitled to repayment from Andrew and Robert if his work did not bear fruit was never considered. Andrew's evidence was that since Julie never asked them for payment of Mr Hartley's bill, the question of

payment was "forgotten about".

Payment for Julie's work

106 Andrew says that Julie never said she would charge for her work and had she done so, he would have refused to pay her. His view was that she was doing this work to help them out as a member of the family and because she was more fortunate than them. She sold it to them on the basis that her firm did some publicity work for Mr Hartley and she had a working relationship with him. He says that relations were a lot more amicable in 2008 than they are now.

107 Robert says that Julie did not say she was going to charge for any work she did. If she had done so, his response would have depended on what the charges were going to be. If she had given an acceptable indication of costs, he would have agreed to them but had she wanted a percentage of the increase in value, he would have refused. He had no communication with Julie following Duncan Hartley's instruction. He did not get on with her and was happy to leave Andrew to be the point of contact.

108 I find that there was no discussion at this meeting on 23 June 2008 about how Julie would be remunerated for her work on the project. However, the evidence is clear that Julie expected to benefit from the work she was proposing to do with Mr Hartley's help and that Shirley, Andrew and Robert were aware this was Julie's expectation. It was clear to Shirley from her discussions with Julie prior to the meeting both that Julie felt a strong sense of grievance about the terms of her father's will and also that Julie saw the sale of the Netherton Moor land for development as a means of (to use Julie's phrase in her letter to her sisters) balancing the inheritance books. It was also clear to Andrew and Robert from the conversations Julie had with each of them on 17 and 23 June 2008 respectively that Julie expected to benefit from the work she was proposing to do. I find that each of Shirley, Andrew and Robert appreciated from the time of this meeting, if not before, that Julie expected to benefit from the work she was doing, even though no agreement was reached as to the extent of that benefit.

Events after the site meeting

109 On 24 June 2008, the day after the meeting, Julie confirmed by email to Mr Hartley that she agreed to commission and fund his work, asking that his invoices be sent to her home address, and she gave him Andrew's contact details. Mr Hartley responded the same day setting out the work that he envisaged would need to be done. The process as outlined by Mr Hartley was summarised in a PS to an email which Julie sent to Andrew on 4 August 2008 to which I refer below.

110 On 19 July 2008, Julie sent Mr Hartley an email indicating she was keen to progress the submission on the Netherton Moor land and had considered how she might help him in presenting the case, particularly in terms of the land's

unsuitability for modern livestock farming. She listed the sort of information that she thought would be required for the submission and indicated that since she had a 'work window' at that time it made sense to do that work sooner rather than later.

111 Mr Hartley sent Julie an email on 4 August 2008 seeking information that he needed, having run through the form which the Council required for consideration of housing sites through the SHLAA process. Julie sent an email to Andrew the same day setting out the questions Mr Hartley had raised and draft answers to those questions. Julie gave Andrew an indication of the anecdotal evidence she was looking to put together to help illustrate the current and future problems with farming the land and asked him if he had anything to add to her list. The PS to her email read as follows:

> This is the ongoing process, as outlined by Duncan:
> I will be starting on the 1st part of the submission (in July) - research and representations covering the settlement strategy to ensure Netherton is included as a local service centre. Technically the comments will have no formal meaning until the key document (Core Strategy) emerges in October/November 08. I will ensure that the Core Strategy is then tracked to public release and provide draft representations, as necessary, for your prior approval.
> The 2nd part of the work is to make a submission to aid the officer consideration of the site for their reference in drawing up the Strategic Housing Land Availability Assessment, that same work will go forward to inclusion in the Council's database for the production of the Development and Open Space Development Plan Document. The Council have not yet worked out how the two are being connected in database tabs!
> The 3rd part is some way off in making representations on the actual Development and Open Space Development Plan Document when it is released for public consultation.

112 Julie chased Andrew for answers to her questions and having spoken to him on 6 August 2008, she provided Mr Hartley with the required information by email the same day. In the same email, she asked Mr Hartley to give her some pointers regarding information about the site which he thought might be relevant.

113 On 11 August 2008 Mr Hartley sent the Council an email attaching four documents submitted in response to the 'Call for Sites' relating to the Council's work on the SHLAA, those documents being three completed forms for three sites at Netherton and a plan showing all three sites. Mr Hartley indicated in his email he would follow up those submissions with more detailed assessments of each site based on the following issues referred to in the final section of the site documents:

1. Netherton - a sustainable location for future residential development
2. The submitted sites - detail and related history of use and development interest
3. Services provision - retail and community

4. Services provision - infrastructure analysis
5. Known constraints
6. Land availability in Netherton and the 3 sites
7. Delivery - availability, suitability and achievability assessments
8. Importance of the sites in the context of land availability
9. Design and quantity

114 On 27 October 2008, the Council wrote to Mr Hartley confirming that the sites which he had identified through the Call for Sites for the SHLAA had been included in the study for further assessment. The Council's letter emphasised that the inclusion of the site in the assessment did not commit the Council in any way to its allocation for development.

115 Mr Hartley passed this information on to Julie in his email of 29 October 2008 in which he listed the issues referred to in the final section of the site documents lodged on 11 August 2008 and continued: "You can be of great assistance on the collation of information for the above - to give the local context and save on my costs". It was in response to this request that, over the next few weeks, Julie produced several drafts of an 11 page document containing detailed text with accompanying annotated photographs.

116 In the course of preparing this document, Julie sent an email to Andrew on 10 November 2008 asking for his help in relation to issues 3, 4 and 6, explaining what information was required and also how they needed to build a case for the unsuitability of the land for 'modern farming'. She sent Andrew a further email on 21 November 2008 saying she was "halfway through recording and writing all of the info for Duncan for the proposal submission" but was "short of a few bits and pieces", namely, "details about existing development sites" (attaching a map identifying those sites), details about existing health services and pictures of fly tipping/littering and a picture of Netherton Fold "showing the problems of farming kit versus parked cars". She indicated she was staying with Shirley that weekend when she would be taking the remaining pictures.

117 On 25 November 2008, Andrew's wife Carol sent Julie an email attaching what was described by Julie in the submission as a 'staged photo of tractor and slurry spreader', designed to show the difficulty of carrying on farming in a suburban environment. That afternoon, Julie sent Andrew a draft of the document describing it as 'very drafty' at that stage and seeking some further information. Carol replied the following day indicating that Andrew didn't know the answer to Julie's question but he would speak to Robert and she would try to dig out any information if she could. On the same day Julie sent the 'very drafty' document to Mr Hartley asking him to look at it and let her know what was missing from the sections he had identified for her 'follow-up' before she spent

any more "reconnaissance and writing time".

118 Julie provided Mr Hartley with a further draft of her submission document as an attachment to an email sent on 1 December 2008 which shows that by that time she had spoken to Andrew or Carol regarding the further information she had sought in her email of 25 November 2008. This document was a longer and considerably revised document from her earlier draft. It had grown to 20 pages and contained a considerable amount of detailed information addressing each of the issues identified in Mr Hartley's 'Call for Sites' document.

119 On 3 December 2008, Mr Hartley sent Julie an email to which he attached her draft submission for the SHLAA with his proposed edits, commenting that he had put a lot of the evidence in the appendices and added necessary planning references. In the same email he asked if he could submit an invoice as they had now reached completion of stage 2 of his work which related to the release by the Council of the following documents: (1) LDF Core Strategy (the purpose of that work having been to ensure Netherton was part of the settlement strategy which would allocate land there and to ensure that the principles of the Green Belt review would allow for consideration of those sites) and (2) Allocation Development Plan Document (DPD) (the purpose being to ensure that the sites were included in the draft DPD and if not to make representations as well as ensuring that the Green Belt was "rolled back" for those sites). Mr Hartley commented that the Green Belt review was "going to be a very complicated procedure" as there was a regional policy saying the West Yorkshire Green Belt should be reviewed as a whole, yet not one of the West Yorkshire authorities had addressed that matter to date.

120 Julie responded to Mr Hartley's email on 6 December 2008 attaching a further draft of the SHLAA submission. Mr Hartley sent an invoice addressed to Julie dated 8 December 2008 in the sum of £2,735.62. On 15 December 2008 Duncan Hartley submitted a second report and submission entitled "SHLAA supporting statement to Kirklees Council". The Council acknowledged receipt of Mr Hartley's SHLAA supplemental information and indicated that the Core Strategy would be available for consultation at the end of February 2009.

121 It is clear that Julie did the lion's share of the research that was required for the SHLAA submission, investigating and recording details about local services, employment, schools, care services and the like, as well as the history of the site. She was also substantially responsible for writing the document itself. The activity log which she created in advance of giving evidence estimates that she spent more than 80 hours in dealing with the various stages of preparing this submission and whilst this is no more than a best estimate undertaken some 15 years after the work was carried out, I consider that Julie is likely to have spent this sort of time in researching, coordinating input from Mr Hartley, Andrew

and Carol and writing this document.

122 In February 2009, the Council issued its first stage consultation paper on its Core Strategy in which it set out details of the amount of development needed and broad locations where growth could be accommodated. Mr Hartley received a letter dated 29 February 2009 from the Council requesting comment on the Core Strategy and inviting him to attend a Council drop-in session on 31 March 2009. Both Julie and Duncan Hartley attended the drop-in session and spoke to a member of the Council's property team about the Local Plan process and the sites at Netherton. Julie sent Mr Hartley further comments by email on 2 April 2009. On 14 April 2009 Mr Hartley submitted a response to the Council on the Core Strategy consultation, making the case for the suitability for release of the Netherton Moor sites from the Green Belt for new housing development. On the same day Mr Hartley sent Julie an invoice totalling £949.90 for this work which Julie paid.

123 In December 2010, the Council published and sent to Mr Hartley its Core Strategy draft proposals consultation, identifying the need for release of Green Belt land in order to accommodate 2,800 new homes. Mr Hartley (who by this time had joined Rural Solutions as director of planning) emailed Julie on 6 January 2011 with his proposals and fee estimate for work required to be done in relation to the key stages of the LDF over the next couple of years. Julie gave her approval for this work to be done.

124 On 11 February 2011 Mr Hartley submitted a representation to the Council on its Core Strategy draft proposals on the SHLAA in respect of the three Netherton Moor sites, supporting Netherton as a suitable location for new development and requesting that the land be identified as an area suitable for Green Belt release. Later that month, the Netherton Moor sites were accepted as part of the SHLAA and recognised within the Council's draft LDF Core Strategy as development prospects, with Netherton also promoted as a village suitable for development and Green Belt release.

The 2010 SHLAA

125 In October 2011, the Council published its "2010 SHLAA" which scored and provided a summary assessment of potential residential sites in the Kirklees area. As Mr Hartley said in evidence, this was an important document because it identified two of the three Netherton Moor sites as site numbers 281 and 283, although site 283 included some land not owned by the Mates. The assessment considered the sites as suitable, achievable and available and it meant that these sites were firmly in the Council's Local Plan system. It also meant that the Netherton Moor sites would now be of interest to a housebuilder, particularly a volume housebuilder.

126 I accept Julie and Mr Hartley's evidence that this inclusion of the two Netherton Moor sites in the 2010 SHLAA was a direct result of the submissions made by them.

Response to the 2012 Core Strategy

127 On 6 March 2012, the Council approved its LDF Core Strategy for submission to the Secretary of State. There was then a six-week consultation period on this document between 20 September and 2 November 2012. On 18 September 2012, Mr Hartley sent Julie an email explaining that the Council was shortly to publish the final draft of its LDF Core Strategy document, giving the public the chance to comment prior to 2 November 2012 following which the final draft version together with any comments were to be submitted by the Council to the Secretary of State for consideration by a Planning Inspector.

128 After conferring with Julie, on 1 November 2012 Mr Hartley submitted a detailed representation to the Council, commenting on the (lack of) soundness of the Core Strategy which he said was neither effective nor consistent with national policy. He identified a contradiction in the Core Strategy which stated development in the Green Belt would be 'severely constrained' while also making provision for the delivery of urban extensions in the Green Belt. Mr Creighton's view was that Mr Hartley's challenge to the soundness of that draft Core Strategy is likely to have been taken into account because the revised Local Plan published in September 2015 included some Green Belt land previously excluded, including two sites forming part of the land at Netherton Moor.

Housebuilders

129 It was at about this time that Julie discussed with Mr Hartley, now that the Netherton Moor sites had been included in the SHLAA, how her family might wish to structure a sale of the land. They agreed it was in the family's best interests to have a beauty parade of housebuilders with a view to getting a contract conditional on planning consent with an agreed negotiated price, as opposed to an option agreement. It was Julie's evidence that she carried out some research and made some useful contacts with Barratt Homes and Redrow Homes. Mr Hartley's emails in late 2012 show that he tried to make contact with one of his housebuilder contacts at Taylor Wimpey to arrange a meeting with the Mate family but did not manage to get hold of him.

130 Andrew referred in his witness statement to receiving "probably between 7 and 10 letters of introduction from building firms, saying that [the Council] had asked for land to be put forward for the new SHLAA and they thought our land on Netherton Moor was suitable". He remembered receiving a letter from Barratts and possibly also Taylor Wimpey. None of the letters of introduction to which Andrew referred were in evidence, save for a letter from Persimmon addressed to "Mr C Mate" dated 29 January 2014 (to which I refer below). I find that any letters of introduction from housebuilders received by Andrew were sent

in late 2013 or 2014, not at the time that Julie and Mr Hartley were discussing potential housebuilders in late 2012.

The 'angry call'

131 On 3 January 2013, Julie called Andrew to update him on the progress she and Mr Hartley had made with regard to the SHLAA and to organise a meeting. She explained that they wanted to know what Andrew thought about Taylor Wimpey as a builder for the Netherton Moor land and to organise direct talks with them. Andrew refused to engage in conversation with Julie about Taylor Wimpey. His response was "What's it got to do with you?". Julie asked him what on earth he meant by this, given that he knew she and Mr Hartley had been doing a great deal of work to get the Netherton Moor sites out of the Green Belt and suitable for development. In her witness statement, she said she did not know quite what to make of this conversation as Andrew had often used the phrase "What's it got to do with you?" when speaking to her in the past. In cross-examination Julie said that Andrew used this phrase in response to her having said she was doing the work "on behalf of the girls". She described it as "his typical rant" which she understood to mean "push off, you silly woman". She denied that Andrew had told her to stop work.

132 Andrew's account of this conversation on 3 January 2013 was that it was "quite an angry conversation, and it was likely when we fell out". His evidence was that he felt Julie was trying to wheedle her way into being in control of what was going on and he didn't like it. He accepts that he said "What's it got to do with you?" but says he went further than that and told Julie that he didn't want any help from her and she had to stop work on the project straight away. He said her reply was that she was doing it for the girls, Gillian and Virginia, and she didn't need any more money.

133 Andrew's evidence was that in the absence of contact from Julie for some three years between 2009 and 2012, he was not aware that she and Mr Hartley were still working on the project. Julie accepted that she had not spoken to Andrew directly about her and Mr Hartley's work during this period but said she had spoken to Shirley about the project at various stages and expected Shirley to have passed the information to Andrew.

134 There is a conflict of evidence between Julie and Andrew as to whether on 3 January 2013 Andrew told Julie to stop work on the project. I prefer Julie's evidence on this point and find that, in the course of what clearly became a heated and angry conversation, Andrew said to her "What's it got to do with you?" but did not expressly tell her to stop work. By that time, Andrew had been negotiating with another housebuilder, Alcuin Homes, regarding development for housing of some farm buildings at Fold Farm and it is likely that, before this conversation with Julie, he had been told by Shirley (who had herself been told by Julie) about the inclusion of Netherton Moor land in the

Council's list of potential development sites. Although at that stage he had not, as I find, been approached by housebuilders in relation to the Netherton Moor land, he was sufficiently confident in his own ability to conduct negotiations that he did not want Julie to be involved in any discussions with housebuilders and regarded her suggestion of a meeting with Mr Hartley to discuss tactics in this regard as interfering and an attempt by Julie to take control of the process. Both Andrew and Julie are agreed that Julie referred in this conversation to the fact that she was "doing this for the girls", but I do not accept Andrew's evidence that Julie said she did not need any more money. I find that Andrew rebuffed Julie's suggestion of a meeting to discuss potential housebuilders in the manner Julie described, no doubt angered by Julie's suggestion that she was doing the work on behalf of the girls, but he did not tell her to stop work.

Events following the 'angry call'

135 Julie called Mr Hartley straight away to tell him of her conversation with Andrew but Mr Hartley was on leave. She sent him an email in the evening of 3 January 2013 asking him to speak to her before talking to Taylor Wimpey. She tried calling Andrew twice over the following week to pick up on their discussion but he did not answer. When she spoke to Mr Hartley on 7 January 2013, they agreed to postpone any further talks with housebuilders for the time being and to continue such work as needed to be done in relation to the promotion of the Netherton Moor sites.

136 It was in the course of 2013 that the farming business started to get into real difficulties. In July 2013 Andrew took the decision to sell 12 acres of the partnership's outlying farmland at Linthwaite in order to placate the bank and pay off the overdraft mortgage.

137 In October 2013, Mr Hartley received information that the Planning Inspector had called for the withdrawal of the Council's LDF Core Strategy document. He sent Julie an email advising her there was no real benefit in participating further at that stage and it was more important that they continued to monitor the progress of the Core Strategy. It was Mr Hartley's view that the Planning Inspector's response did not detract from the draft Core Strategy's vision and objectives which supported the representations they had already made. This view was endorsed by Mr Creighton whose evidence was that the strategic approach to the location of new development in the final version of the Local Plan was very similar to that identified in the unadopted and withdrawn LDF Core Strategy. It was also Mr Creighton's opinion, which I accept, that Julie and Mr Hartley's representations to the unadopted and withdrawn LDF Core Strategy were instrumental in the Council deciding to allocate the Netherton Moor land for housing development in the 2015 draft Local Plan.

Approach by Persimmon in 2014

138 On 29 January 2014, Gareth Lloyd, a planner at Persimmon, wrote to "Mr C Mate"

at Ouselea Farm, Shirley's address, advising that he had identified the Netherton Moor land through a title search of a number of sites in the area and had done a detailed assessment of land that may have future development potential. He asked for a meeting to discuss matters further. This letter resulted in Mr Lloyd and his colleague Chris Hull from Persimmon visiting Andrew to inspect the Netherton Moor land in early February 2014.

139 On 6 February 2014, Mr Lloyd sent Andrew a letter (wrongly dated 6 February 2013) offering to enter into an option agreement which would give Persimmon the right to promote the Netherton Moor land through the planning process and to purchase the land in the event that it secured its removal from the Green Belt and obtained residential planning permission.

140 Persimmon's letter stated that, given the financial risk associated with promoting land through the planning process, it was common for the developer to agree a 'discount' on what the land would be worth on the open market. Persimmon offered to pay a non-refundable fee of £20,000 on signing the option and then to pay 90% of the open market value of the land on exercise of the option following grant of full planning permission. Andrew sought advice on this letter from Mr Oates whose file note of 10 February 2014 records that he thought it was appropriate for them to confirm they were interested in going ahead and to ask for a draft option agreement which could be considered in detail.

141 Persimmon sent Andrew a document entitled heads of terms dated 17 February 2014 which Andrew forwarded by email to Mr Oates on 19 February 2014. Paragraph 6 of these heads of terms increased the option fee to £30,000 which fee was deductible from the purchase price in the event that the option was exercised. Paragraph 7 also made clear that all abnormal costs, legal and agents fees and planning/promotional/appeal costs could be deducted from the purchase price. On 21 March 2014, Mr Oates sent Andrew a further copy of the heads of terms and plan which he had received from Persimmon's solicitors. These heads of terms were agreed on 26 March 2014, subject to an additional piece of land being included on the plan.

142 Persimmon has disclosed copies from its files of identical unsigned letters dated 22 and 23 April 2014 from Mr Lloyd to the Council, giving reasons why the Netherton Moor land should be released from the Green Belt and included in the Local Plan as suitable for development. It is not clear whether these letters were actually sent by Persimmon or received by the Council. Almost 18 months later, Persimmon sent a letter to the Council dated 4 September 2015 which refers to Persimmon having submitted "a formal representation to the Kirklees Local Plan alongside a promotional document in April 2015" (i.e. not 2014) which suggests that no letter was sent in April 2014. However, despite Persimmon having given Andrew and Robert access to their file for the purposes of disclosure, no document was produced to show what, if anything, was sent by Persimmon to the Council in April 2015 and I cannot be satisfied that Persimmon wrote to the Council in either April 2014 or April 2015.

Julie's 2014 letter to Shirley

143 On 14 June 2014, Julie sent a letter to Shirley in the following terms:

> Dear Mother
> There comes a time when you have to put your thoughts down on paper. And regrettably, as a result of your 'phone call of three weeks ago, this is one of those times.
> I know you struggle very hard with this concept, but believe it or not, all of your daughters have a personal - and dare I say - even a moral stake in the farm and the family home, and deserve to be recognised.
> Why?
> Because we all had a hand in the success of the farm in its early years - working long hours from a very early age, every day, all year round. Working before school and after school, and working all through our teenage years.
> This forced labour, so to speak, wasn't just the odd bit of lawn mowing, it was hard, manual work, often involving heavy lifting, often for long hours.
> This work wasn't done out of choice, or even paid for. We had no say in the matter.
> It affected our schoolwork. It affected our social life. It affected our development as individuals.
> I'm not sure if you will understand my next statement, either. But I speak for myself when I say, I was quite emotionally affected by the experience, and particularly later in life when we discovered that none of our peers at college and at work had to endure the same.
> It goes without saying that subsequently learning that father was not going to treat all of his five children equally - leaving the farm to only the two boys and only providing the girls with monetary concession of a minor proportion - was yet another heavy and psychological blow.
> Which brings me onto your 'phone call. You have, within your power, one of the biggest opportunities in our lifetimes to 'put the record straight' to 'right the wrongs of our childhood' so to speak, and to create some parity with our brothers. At long last!
> But you seem to be dead set on the opposite.
> To cut to the chase, I understood from conversations earlier this year that we (yourself and all three daughters) were all to visit the solicitors about the family house, so there would be no risk of inequality between the three girls.
> But this seems to have gone out of the window, with Virginia organising to move into the family house without any agreements in place and no strings attached.
> You seem to forget: Gillian and I have had to cope with favouritism for our younger sister for most of our lives. But there comes a point - particularly when other family members (Gillian's husband and children and my partner, Tom) see what is happening - where it really is a step too far.
> It goes without saying that Gillian and myself are both extremely supportive of the granny flat and Virginia's request to come and live in the family house, so that you would have the added security and the comfort of a family on your doorstep in your latter years.
> We think it is a good idea and Tom has already offered to provide funds to enable you to make a head start with the building of the flat.
> However I am not OK with Virginia riding roughshod over what has already been agreed.
> I am also particularly concerned by her saying that she will 'not to move in' [sic] if her two sisters are not happy with it. This sounds too much like a threat to me, which must have caused you additional worry.

> What seems to have been forgotten through all of this is that Virginia can afford to pay for our family home several times over and still have plenty of money in the back, once her farm is sold.
> I think it is a real shame that I have had to write to you like this. We have enough issues in our family as it is - with Robert's illness and the financial instability of the farm business.
> On top of this is your complete opposition to 'a family meet up' to discuss anything at all about your care and wellbeing in your old age. Yet this is a matter for us all and one which we feel we should all be involved with.
> Despite our distance, Gillian and I have an enormous amount of love, respect and emotional attachment to the family. But you are putting all of this in jeopardy.
> We feel that we and our families are being completely ignored. That we are completely irrelevant and don't count for anything - which is all made far worse when matters which affect us are being carried out behind our backs.
> It really is a very poor state of affairs which just leaves me extremely sad.
> What is for certain, in all of this, is that father would have wanted all of his daughters to be treated equally - irrespective of their personal circumstances, good, bad or indifferent. I am eternally hopeful that you will honour his wish.

144 It seems to me that there are four points to be made about this letter. First, it is referring to a telephone call towards the end of May 2014 when Shirley told Julie that Virginia was to move into the family house. This plainly came as a surprise to Julie in light of her understanding (from conversations she'd had with Shirley earlier in 2014) that Shirley and her daughters were to visit Mr Oates about the family house with a view to ensuring there would be no risk of inequality between the three daughters. Second, Julie regarded dealing equally with the daughters over the family house as being an opportunity to "put the record straight" and right the wrongs of their childhood by creating "some parity" with the brothers. Third, whatever Shirley said to Julie in this telephone call had caused Julie to conclude this plan had now "gone out of the window" and Shirley was "dead set" on doing the opposite of what she had previously agreed. Fourth, whatever Shirley had said on that call had caused Julie to conclude that Shirley struggled hard with the concept that all her daughters had a "personal … even a moral stake in the farm and family home", and deserved to be recognised.

145 Julie was cross-examined about this letter. Her evidence was that at the time she wrote it her brothers were putting Shirley under 'terrific pressure' to say nothing to Julie, that this letter was only concerned with the farmhouse and granny flat and had nothing to do with promises made by Shirley to Julie regarding sale proceeds of farmland sold for residential development.

146 It is right that the focus of this letter is Julie's complaint that Shirley had allowed Virginia to move into the family house without taking account of her and Gillian's expectation that, before this happened, the three daughters and Shirley would visit solicitors about the family house to ensure there was "no risk of inequality between the three girls". It is also right that at this stage the possible development of the Netherton Moor land was a long way off, especially given

the Planning Inspector's decision in October 2013 to request the withdrawal of the Council's LDF Core Strategy document.

147 Nevertheless, I find it odd that when referring to Shirley having the power to 'right the wrongs of our childhood' and 'to create some parity with our brothers', Julie does not mention the promises which she says Shirley had made to her with regard to all the children receiving a share of the proceeds of sale of the Netherton Moor land in the event that it was sold for development. Moreover, in circumstances where, in Julie's view, Shirley appeared to be resiling from an agreement she had previously made, it is surprising that she did not see fit to refer to the promises Shirley had made regarding the Netherton Moor land which would, if permission for housing development was given, further redress the inequalities between the siblings about which, as the letter makes clear, Julie felt so strongly.

Progress towards the draft Local Plan and signature of the Persimmon option agreement

148 On 4 July 2014 Mr Lloyd of Persimmon wrote to Andrew updating him on the Local Plan process, having attended a Local Plan workshop organised by the Council on 2 July 2014. On 10 August 2014, Mr Lloyd wrote to Andrew again informing him that the Netherton Moor land had been included in the 2014 SHLAA as sites 281 and 283 and that, whilst inclusion in the SHLAA "does not in any way change its planning status at this stage", the sites' inclusion in the SHLAA was a positive assessment of their potential suitability for housing. Mr Lloyd indicated that a site allocations methodology would be applied to the Netherton Moor land, including a more detailed technical assessment, to determine if the land could be allocated for housing through the Local Plan, a draft of which was due to be published for consultation in November 2014.

149 On 28 August 2014, Taylor Wimpey wrote to Robert and Andrew expressing interest in the Netherton Moor land, referring to the Local Plan which was to include site allocations, with consultation planned for spring 2015 with a view to its adoption in 2017. Taylor Wimpey said the Council would need to accommodate approximately 30,000 new homes over the next Local Plan period of 15-20 years and it was anticipated it would need to allocate Green Belt land to accommodate approximately 8,000 new homes in order to meet this requirement. In view of the fact that negotiations with Persimmon were by that stage well advanced, this approach from Taylor Wimpey was ignored by Andrew and Robert.

150 On 2 September 2014, Mr Oates had a meeting with Shirley, Robert and Andrew at Shirley's house where they went through the terms of the Persimmon option agreement. This option agreement was signed by Shirley, Robert and Andrew on 7 October 2014 and by Persimmon on 25 November 2014 when the option fee of £30,000 was paid. The option agreement provided that, following exercise by Persimmon of its option, the intending seller (Shirley, Robert and Andrew)

would receive a purchase price equivalent to 90% of the open market value of the option land less (amongst other matters) the option fee and any planning costs up to a maximum of £200,000.

151 On 6 July 2015, the Council published the 2014 SHLAA. The Netherton Moor land was listed as sites 281 and 283 and assessed to have housing capacities of 333 and 174 houses respectively. This updated version of the SHLAA maintained and improved the Netherton Moor land's potential for housing development by excluding land in site 283 which was not within the Mates' ownership. The updated SHLAA was used by the Council in the period between July and September 2015 to inform which sites to allocate for development in the draft Local Plan which was published for public consultation in November 2015.

152 On 4 September 2015, Mr Lloyd of Persimmon sent a letter to the Council about the Netherton Moor land with site references 281 and 283. The letter provides a summary of the sites' availability, suitability and achievability. It also refers to a promotional document sent to the Council in April 2015 but, as I have already noted, no such document was produced by Persimmon, even though Persimmon made all their documents available to the Defendants for disclosure. The only promotional document in the evidence was that attached to a further letter sent on 30 September 2015 by Mr Lloyd to the Council which confirmed Persimmon's view that the sites were sustainably located and that it was not aware of any physical, environmental or ecological constraints preventing the sites coming forward as a housing allocation. The document includes the conclusions of the technical work that Persimmon had commissioned from a number of specialists who had undertaken work to determine the achievability of the sites.

153 In view of the lack of evidence that the Council received letters from Persimmon in either April 2014 or April 2015, I have concluded that the first documents received by the Council from Persimmon were those sent in September 2015. I accept the evidence of Mr Creighton that, by the time these letters were received, the officers and members of the Council had already decided which sites they were going to allocate to the new Local Plan. These September submissions from Persimmon were therefore too late in terms of their timing to influence the allocation of sites in the Local Plan.

The draft Local Plan

154 On 7 November 2015 the Council's draft Local Plan was formally published on its website for public consultation. Mr Hartley described this as an important document which was "tremendously good news for the Mate family" as it showed the two sites identified as sites 281 and 283 enshrined in draft planning policy with housing allocations of 140 and 105 dwellings in the draft Local Plan. He described this as the second pivotal stage in the planning process, the first being the positive references to the sites in the SHLAA. Four other potential

housing sites in Netherton were rejected by the Council and not included in the draft Local Plan.

155 I agree with Mr Creighton's opinion that the Council's decision to propose in the draft Local Plan that the Netherton Moor land be released from the Green Belt and allocated for housing was due to the various representations made by Mr Hartley and Julie since 2008. Particularly influential was their decision to submit the Netherton Moor land in response to the Council's Call for Sites process, accompanied by a well-argued and comprehensive planning case for its development. This was recognised by the land's inclusion in the Council's 2010 and 2014 SHLAA documents. Moreover, the continued involvement of Julie and Mr Hartley prior to the release of the draft Local Plan was vital in persuading the Council that the land continued to be available and suitable for significant housing development and that there was justification for its removal from the Green Belt. For the reasons already given, I find that Persimmon's involvement came too late to have any influence on the Council's decision to include the Netherton Moor sites in the draft Local Plan.

156 Mr Hartley sent Julie an email on 16 December 2015 informing her that "a good portion of your sites are now being put forward as potential housing allocations by the Council". He recommended that a short response be made to the consultation before the closing date of 1 February 2016, supporting the proposed allocations and challenging the land excluded. He said this would entail contacting the planning department for more information on why the excluded land was considered unsuitable for allocation.

Julie's December 2015 letter to Andrew, copied to the rest of the family

157 On 21 December 2015, Julie sent a letter to Andrew, accompanied by a file referred to in the letter. This letter was copied to Shirley, Robert, Gillian and Virginia. The letter reads as follows:

> I am pleased to report that, thanks to the work undertaken by my agent, Duncan Hartley - who has been commissioned and paid for by me since 2008 - part of the land on Netherton Moor is now being put forward as potential housing allocation by Kirklees Council in the draft Local Plan.
>
> Getting the land out of Green Belt and considered for housing is a massive breakthrough!
>
> I am confident that if I hadn't started the ball rolling in 2008, done the necessary research and written work, and paid for all of the vital submissions since then, this breakthrough would not have happened.
>
> The evidence of my work is very clear from the draft Local Plan maps (see file), as the solid orange areas and the hatched areas on the Netherton Moor land match exactly with the sites submitted by Duncan in 2008 (these are outlined in red) -even to the extent of including the Hillbilly field that I personally insisted was included.
>
> For your info, I've produced a file of correspondence and all of the submissions made

by Duncan over the last seven years, which was backed up by my own research, local knowledge of the area and the advice from my professional contacts.

Next steps

I'm sharing this information with Mum, Robert, Gillian and Virginia, because I don't think we should miss any steps in the opportunity to take advantage of this tremendous opportunity.

You did agree, some time ago, that if it came to selling the farm's land and property assets that they should be shared amongst all of the siblings.

I hope we can do the right thing and all come together on a way forward which will collectively benefit us all.

Going forward we will need employ [sic] the relevant professionals, and most likely a developer/project manager, and we must start the dialogue with a major house builder immediately.

However, the next vital steps are to make submissions - and liaise with the Council - before the draft Local Plan consultation deadline of 1st February 2016. This is crucial if we are to stand any chance of getting the land recognised as a viable housing site. The 'game' is good PR, the right professionals and dogged perseverance.

I am again speaking with Duncan Hartley:

1) To draft a submission supporting the proposed allocations.
2) To argue the case that the hatched land that is currently excluded should also be designated as housing development land, as well as to introduce the name of an interested house builder. …

158 There are four points to be made about this letter.

158.1 First, the letter was accompanied by a file containing the correspondence and submissions of Mr Hartley since 2008 which had been "backed up" by Julie's research, local knowledge and advice from her professional contacts. By enclosing this file with her letter, Julie was acknowledging that she had not supplied this information previously. Indeed, it would appear that her only previous communication with Andrew had been the 'angry call' back in January 2013.

158.2 Second, Julie refers to Andrew having agreed "some time ago" that "if it came to selling the farm's land and property assets … they should be shared amongst all of the siblings". It is not clear when Julie is saying that Andrew reached this agreement. It does not form part of her pleaded case regarding promises or assurances on which she says she relied. It may be a reference to the telephone call six days before the site meeting on 17 June 2008 when Julie said words to the effect that, if Mr Hartley was successful, "we would all be better off, particularly us girls" to which Andrew responded: "Alright. I know what you're saying". I have found that this conversation took place in the terms recalled by Julie. However, I do not see how this conversation can be said to constitute a contract in circumstances where there was no agreement as to how any sale proceeds

were to be shared between the potential recipients of those proceeds (Shirley and the siblings). Julie's reference to them all, especially the girls, being "better off" does not mean that the proceeds would be shared equally. Had that been Julie's expectation, she would have said so. Julie effectively acknowledges no agreement was made by Andrew when she expresses her hope in this letter that they "can do the right thing and all come together on a way forward which will collectively benefit us all".

158.3 Third, Julie was clearly unaware of the Persimmon option agreement at the time of writing this letter because she refers to the immediate need to employ the relevant professionals (i.e. a developer/project manager) and start a dialogue with a major housebuilder.

158.4 Fourth, Julie refers to her intention to instruct Mr Hartley to draft a submission supporting the proposed allocations and to argue for the inclusion of land currently excluded, as well as introducing the name of an interested housebuilder. This supports my conclusion that, when they had the 'angry call' nearly three years earlier, Andrew did not tell Julie to stop work on the project.

Julie and Tom's post-Christmas visit to Shirley

159 On 28 December 2015, Julie and Tom visited Shirley at Ouselea Farm and had supper with her. Julie raised with Shirley the news about the Netherton Moor land being removed from the Green Belt and allocated for housing, and asked Shirley if she had read her letter. Shirley said she had not read it because Andrew had taken the package away. Shirley then produced a brown envelope containing a photocopy of a Persimmon document with maps and drawings that Andrew had left for Shirley to show Julie. Shirley told Julie that she, Andrew and Robert had signed an agreement with Persimmon. She said that Andrew might call in to see them that evening, as he was aware of their visit, but he did not do so.

160 Shirley said Julie and Tom could look at the Persimmon document but refused their request to take the document home with them. They had a quick look through it and saw it was a promotional document which did not contain anything of a confidential nature and in particular did not say anything about the terms of the agreement which Shirley said had been entered into with Persimmon. Tom expressed his sadness to Shirley that she, Andrew and Robert had not come to Julie and involved her in the negotiations with Persimmon. He raised his concern, derived from his own experience in planning matters, that Persimmon would most likely have pushed for a one-sided option agreement that favoured the developer and tied the land to the developer for many years without a backstop, as opposed to a contract conditional on planning. He asked Shirley whether Andrew had arranged for a beauty parade of several housebuilders competing against each other in order to maximise the selling price, as he had done with the sale of some of his land in Whitchurch.

161 Shirley responded by saying that Andrew had done a marvellous deal and knew what he was doing. Julie became, as she said in cross-examination, "terribly upset" and burst into tears. She said that Andrew had gone behind her back, despite having agreed to what she had been doing with Mr Hartley, and her and Mr Hartley having together pulled off the near impossible of getting the land out of Green Belt and allocated for housing. This had taken years of hard work and time and effort on her part and funding of Mr Hartley from her own money. According to Tom, Julie said to Shirley that the whole reason for doing this work was so that the sisters would benefit as much as the brothers and that is what had been said and promised all along. Julie recalls that Shirley responded by saying that she should definitely be paid for the work she had done, that she didn't think the sale of the land would go ahead anytime soon and could take another 10 or 15 years before it was sold but, when it did happen, she said that Andrew had told her that he would see the girls right.

162 In giving their accounts of this post-Christmas visit to Shirley, I find Tom and Julie were doing their best to recall what was said nearly 7 years ago. In cross-examination, Julie reiterated what she recalled in her witness statement as Shirley having said, namely that she would be paid for the work she had done, that Shirley didn't think the sale of the land would go ahead anytime soon but that when it did happen Andrew had told her he would "see the girls right". As she effectively confirmed in cross-examination, Julie did not use this occasion as an opportunity to remind Shirley of her (alleged) promises that the proceeds of sale would be shared equally between Shirley and the siblings.

Julie's further instructions to Mr Hartley

163 In early January 2016 Julie informed Mr Hartley that her family had entered into an option agreement with Persimmon. Mr Hartley advised that, notwithstanding this surprising news, he should continue to do work for Julie in order to see the Local Plan through its full process to adoption. On 19 January 2016 he sent Julie his terms for the further work that needed to be done which he estimated would be no more than 3 to 4 hours at his hourly rate of £125 plus VAT.

164 On 29 January 2016, in advance of the Council's deadline, Mr Hartley's colleague Shelley Coffey submitted representations to the Council's planning policy group which supported the approach taken by the Council on the two sites included in the draft Local Plan and objected to the rejection of the other two sites.

Julie's January 2016 letter to Andrew

165 On 26 January 2016 Julie sent a letter to Andrew, copied to Shirley, Robert, Gillian and Virginia, in the following terms:

> I was really interested to see the Netherton Moor submission by Persimmon which you had dropped off at mum's house for me to see on 28th December. The agreement is

indeed a cause for celebration, although there are still some hurdles to overcome in the Local Plan process which won't conclude until mid - and possibly late - 2017.

Key submissions

Since my last letter, I have spoken with Kirklees planning department and can confirm that Duncan's submission to the [SHLAA] in 2008 - and his submissions over the subsequent years (that I also paid for on behalf of D Mate & Sons) - were essential in challenging the previous Green Belt designation around Netherton and arguing the case, so far successfully, that the land should be zoned as a viable site for development.

In other words, if I had not started the ball rolling back in 2008 and Duncan had not done the necessary leg work, we would not be in the favourable position we are today.

This is entirely due to Duncan's perseverance with Kirklees Council and his expert submissions to them since 2008 - particularly with regards to the Core Strategy on Green Belt and promoting the site at every opportunity. If we had not succeeded, the land would still be in Green Belt, therefore undevelopable and of no interest to house builders.

SHLAA and draft Local Plan acceptance

A a result of getting our site submissions into the Council at an early stage and, therefore, getting the Netherton Moor land onto the SHLAA document at the beginning of the process, we managed to get noticed by some major house builders as early as 2012.

You will recall that I 'phoned you in late 2012 with news that two major house builders were interested in talking to you about the Netherton Moor land for housing.

Your response at that time was that you weren't interested. However, I'm guessing that at about that time you were directly approached yourself by Persimmon (as your name is submitted as the family's contact on Duncan's submission documents, not Robert, mum or myself). And the rest, as they say, is history.

Other house builder interest in

You can appreciate that Duncan is disappointed not to have been told much earlier about the Persimmon approach. With the interest we had received from two other national house builders, we could have set up a significant 'beauty parade of builders' to secure the best deal. I say this because Persimmon have a record of presenting one-sided options to landowners and it is always best business practice to consider offers from other interested parties.

Next steps

Despite his disappointment, Duncan's advice remains the same: To draft a submission supporting the proposed allocations and to argue the case that the remaining hatched land on Netherton Moor, that is currently rejected, should be designated as housing development land.

It is important that submissions from the family continue in firm support of the site allocations. These are in addition to any submissions made by the builder, Persimmon.

Farm sales, windfall and tax

Finally, I'm pleased to hear from mum that you said that: "the three sisters will be looked after financially". However, as family communications have never been that good, we would appreciate some evidence that we will be treated fairly in the considerable windfall that may result from selling this - and any other - of the farm's land.

At the moment, the proceeds from the eventual sale to Persimmon would go to the farm partnership, with no mechanism in place to pay anything to the three daughters that we are aware of.

> From a tax efficiency point of view - so as to maximise the net benefit to all five siblings and mother - the advice under these circumstances is to make a land transfer, at today's valuation to the girls well before planning is achieved.
>
> The alternative is that the eventual cash transfer would be after a 28% Capital Gains Tax levy on the full price achieved, with a further potential for 40% Inheritance Tax. Consequently, the main beneficiary would be the HMRC, rather than the Mate family.
>
> Getting all of the ducks in a row now will make all the difference.
>
> Best wishes for 2016.

166 There are three points to be made about this letter.

166.1 First, it is couched in conciliatory terms. Julie refers to the Persimmon agreement as "a cause for celebration", whilst also referring to Mr Hartley's disappointment not to have been told much earlier about Persimmon's approach as they could have set up a beauty parade of builders to secure the best deal.

166.2 Second, Julie's reference to a telephone call with Andrew in late 2012 is clearly a reference to the 'angry call' that now appears to be common ground took place on 3 January 2013, when she told Andrew that two major housebuilders were interested in talking to him about the Netherton Moor land and says his response at that time was that he wasn't interested.

166.3 Third, Julie refers to Shirley's comment on 28 December 2015 that Andrew had said "the three sisters will be looked after financially". It is significant that Julie does not make any reference to Andrew's knowledge of Shirley's alleged promises to her that the proceeds of sale would be divided equally between Shirley and her children. Instead, Julie seeks evidence from Andrew that "we will be treated fairly in the considerable windfall that may result from selling this - and any other - of the farm's land".

167 Andrew did not respond to this letter. His evidence was that he chose to ignore Julie and saw no point in replying to the letter because he had already told her to stop work during the 'angry call' back in January 2013. As far as he was concerned Persimmon was doing exactly what Julie was proposing Mr Hartley would be doing and if Julie was foolish enough to instruct him to do further work, that was a matter for her.

Persimmon's representations to the Council

168 In February 2016, Persimmon's planning consultants, Nathaniel Lichfield and Partners (NLP), submitted a document in response to the Council's Local Plan

consultation entitled "Representations in support of sites at Netherton Moor Road". This submission was accompanied by four appendices including an indicative masterplan, a promotional document, a transport and access appraisal and a landscape statement. The representations also addressed the 2014 SHLAA and the Green Belt review. On 2 February 2016, Persimmon wrote to Andrew with an update on progress, advising him of the representations it had made and confirming it would continue to promote his land.

Mr Oates' attendances on the family including Julie and Tom's meeting with Mr Oates on 9 February 2016

169 On 5 February 2016 Mr Oates made an attendance note of a conversation he had with Shirley that day. Part of that note reads as follows:

> I mentioned that her daughter, Julie, had made an appointment to come and see me at 11.00 am on Tuesday morning, although I have not spoken to her. Mrs Mate says that this is in connection with the deal with Persimmon because her daughter considers that she is entitled to some part of the money received from Persimmon. She says that they have always said that they would make some payment to the daughters if substantial amounts of money were received but Julie's attitude has caused a rift in the family and Andrew and Robert will not now speak to her. She has written letters to them all, which the others have destroyed, but Mrs Mate will send me in the post the letter which received from Julie which I should have before I see her on Tuesday morning.
> She says that Julie has influenced her eldest daughter, but the rest of the family are not happy with her attitude. …

170 Mr Oates spoke to Andrew on the same day and his attendance note of their conversation shows that Andrew was also aware of Julie's meeting with Mr Oates the following Tuesday.

171 On 8 February 2016, Mr Oates received a letter from Shirley which enclosed Julie's letter to Andrew dated 26 January 2016. Shirley's letter says: "I have enclosed the letter that Julie sent which explains why she is so interested in what we are doing. We keep telling her that it has nothing to do with her".

172 The following day, 9 February 2016, Julie and Tom met with Mr Oates at his office. Mr Oates' attendance note records that he informed Julie he was not in a position to give her advice on anything which might give rise to a conflict but confirmed he would listen to her concerns and communicate those issues to Shirley. The note continues:

> [Julie] said that she gave advice on planning and on the land and in particular:
> - In 2004 sent a letter with advice and contact details.
> - In 2008 put the family in touch with Duncan Hartley, a planning consultant and they all went round the land at Netherton Moor which led to submissions being made up to 2012 with a view to diversification and to challenge the greenbelt designation for the land.
> - In 2012 she rang Andrew about this but he said he was not interested.

> In November 2015 the proposed allocations by Kirklees matched what had been put in by her and she was surprised to hear at Christmas 2015 from her mother that the Option Agreement had been signed with Persimmon. She thinks that this was inappropriate because there was a possibility to have a 'beauty parade' of potential developers.
> She said that she had three questions which she wanted to put forward but these were contained in the file of papers which she had brought and which she intended to leave with me so that I could read through them and I said that I would read the file and look at the questions she wanted to raise so that they could be put to the family.
> She says that she and Gillian feel badly about the way they have been treated and that they need to do something now because this is a big issue which will make a significant difference to the family. She mentioned that one possibility would be for her mother to make a gift of her interest to the three girls which she would see as equalising the situation between them and her brothers. She also said that she thought he ought to have challenged her father's Will but realises that it is too late to do so.

173 I have no reason to doubt the reliability of Mr Oates' attendance note of his meeting with Julie and Tom. In particular it is notable that Mr Oates does not record Julie as having raised with him in the meeting the issue of the alleged promises made to her by Shirley regarding equal division of the proceeds of sale of the Netherton Moor land. Instead, she told him that she and Gillian felt badly about the way they had been treated and needed to do "something now". She then mentioned the possibility of Shirley gifting her interest to the three girls which she saw as "equalising the situation between them and her brothers". This is self-evidently a different outcome to that which Shirley is alleged to have promised to Julie.

174 The "file of papers" brought to the meeting by Julie and left with Mr Oates included a five page document addressed to Mr Oates headed "IN NEED OF ADVICE…" which started in these terms:

> You have been our family solicitor for a long time. You knew my father and no doubt have met all of my siblings, except for myself and my elder sister (who can't be here today).
> You consequently know quite a lot about the family history, how my father left the family farm and what is happening to the farm and the business today.
> I'm here, very fundamentally, because living away from the farm and family, my older sister and myself had very little representation and are considered to be largely irrelevant to the family or the farm's past, present or future - when quite the opposite is true.
> I say this because of two major factors; one historical and one current:
>
> 1) My own - and my two sisters' - contribution to the farm business as a working child/teenager during the '70s and '80s was substantial and financially significant to the success of the business.
> 2) My planning and policy submissions to Kirklees Council over the last seven years have resulted in getting the land at Netherton Moor zoned as building land (subject to further consultation). This is a potentially massive windfall opportunity for the family.

175 After this introduction, the document then contains a section with the heading "Farm business contribution as a child and teenager working on the farm" which referred to the unpaid work Julie had done on the farm between the ages of five and 19 which had left her feeling resentful and exploited ("today, such child labour would not be legal").

176 The next section with the heading "Successful building allocation for Netherton Moor land" continues in these terms:

> I was the only sister who was interested in farming and still hold a deep affection for the farm. Suffice to say, I would have dearly liked to continue to [be] part of it, were it not for my brothers.
> I left the farm in 1979 to study Agriculture and Animal Science at Wye College, London University, and fell straight into work in the farming industry, as a journalist and PR consultant for agricultural companies.
> I have remained extremely interested in the farm and its wellbeing, and over the years have continued to offer information and advice. This has included development and planning advice.
>
> First planning submission
>
> The farm started to struggle financially in the late 90s. At the time, one of my clients (Rural Solutions Planning Consultants) were helping many farmers to diversify into farm shops, tourism etc, or to develop parcels of farm land for sale to be able to develop other parts of their business.
> I knew for a fact that Robert and Andrew wouldn't be interested in on-farm retailing or tourism, so I flagged up the potential for land development on Netherton Moor. (This is land away from the main farm site outside the farmland envelope, which was being used for silage making.)
> Having spoken to Robert and Andrew in 2004, I sent my first 'advisory letter' in 2004 - providing examples of land development and providing contacts. Four years later, I got them to agree to a meeting with planning consultant, Duncan Hartley, to look specifically at the Netherton Moor site.
> Following the site meeting/visit in June 2008, Duncan made the first vital submission (comprising three sites) to the [SHLAA]. Much of the background research for the submission was done by myself. I also paid for all of Duncan's consultancy time.
>
> Further submissions
>
> A series of submissions followed over many years - regarding the SHLAA, Kirklees Council Core Strategy and the local Development Plan - specifically to challenge the Green Belt designation for the Netherton Area. Again, I commissioned and paid for all of the submissions. (Please see file.)
> The upshot of all my work was that the three land sites were included as part of the Kirklees Council SHLAA maps as early as 2012, as a result of which Duncan received interest from two national home builders (despite still being zoned as Green Belt).
> The real game changing success came in November 2015. In the draft Local Plan - published for public consultation on 7th November 2015 - a good portion of Netherton Moor land had been taken out of Green Belt and had been zoned as 'potential housing' - 20.26 acres of the 41 acre site.

Letter to Andrew ref. the draft local plan (21st December 2015)

To pass on the good news, on 21st December I sent a letter (copied to all family members) to my younger brother, Andrew, to let him know about housing allocation and advise him on the next planning submission steps.
However, unbeknown to Duncan or myself, Andrew had been approached by Persimmon home builders back in 2012 and the partnership had subsequently signed up to a Purchase Option covering 41 acres of the partnership's land at Netherton Moor.
I personally only became aware of the Purchase Option during a visit to my mother's house on 28th December 2015 (when delivering Christmas presents) and understandably feel devastated and completely let down by the family:

- Andrew was the only family contact I had included on the land and policy submissions to Kirklees council (not Robert, mum or myself) and when Persimmon first made contact to show interest in the Netherton Moor land, he chose not to let me know.
- All three partners (Robert, Andrew and Mother) subsequently signed up to the purchase option with Persimmon and also decided not to let me, or my older sister, Gillian, know.
- When the letter and file of my work and submissions arrived at my mother's house, Andrew called round and took them away before my Mother had the chance to read them.

  Despite the fact that I had done all of the necessary leg work to make the housing allocation possible, I have not been acknowledged, or given any credit, for my initial foresight, any of my work or for my own investment (time and money).

Letter to Andrew ref. communication with Kirklees Council and next steps (26 January 2016)

Following the visit to mother's house on 28th December, I sent another letter to Andrew (cc'd in to all family members) letting them know that I had spoken to Kirklees planning department and confirmed that my early submissions were indeed key to the land being allocated for housing. I also made highlighted [sic] the importance of continued submissions by the family.

177 The next section of the document was headed "SPECIFIC ADVICE ON…" and reads as follows:

How to get recognition and parity for the sisters for their contribution to the farm business

I had the rather naïve idea that, because we worked on the farm and sacrificed our youth to the farm, that the girls would be looked after reasonably well. I was devastated to find out that my father had he left [sic] the entire farm to my two brothers and mother.

I was completely dumbfounded then. And, remain dumbfounded and utterly disappointed to this day. I also regret not challenging my father's will. But at the time of his death, I didn't understand that I could, or how I could go about it.

How the sisters can benefit from the sale of the farm's land and assets, now the brothers are no longer farming

The farm was left to my two brothers on the basis that 'they would be farming it'. As of today, the partnership no longer raises livestock on their own and most of the farm land and the buildings are now rented out.

The 'family' understanding (although nothing in writing) was that if it came to selling the farm assets, the sale proceeds would be split between the five siblings. To my knowledge, the sale of some of the farms' land has already gone ahead. However, the sale proceeds have remained in the partnership.

a) In November 2009, a planning application for the conversion of the old stone buildings on the main farm site (Fold Farm) to five dwellings was approved. The site remains unsold, with the sale subject to a builder/developer coming forward.

b) Several blocks of farm land at Linthwaite (amounting to just over 12 acres) were put up for sale by the partnership in July 2013. The sale by auction on 24 July 2013 raised £140,000, but nothing was passed onto the sisters. I raised this with my Mother not long after the sale. She argued that all of the sale money was needed by the brothers to settle farm debts.

And, there are more land sales in the pipeline:

c) The farm partnership (independent of Duncan Hartley) has made a SHLAA submission and have put forward the remaining farm site (including the modern cow cubicle house, dairy parlour, silage shed and beef housing) for residential house building. Currently, it has been rejected in the draft Local Plan.

The submission of the remainder of the farm site for housing is significant and demonstrates that my brothers have given up on farming the farm themselves and are instead focusing on selling the farm assets.

178 The final section of the document is headed: "How to ensure that the sisters benefit from the windfall sale of the Netherton Moor land for housing". It reads as follows:

The only faintly positive feedback I received was at my Christmas visit to Mothers. After a heated exchange, she said that the costs that I have incurred with Duncan Hartley would have to be paid for.

She also said that Andrew said "that the girls would be looked after" in any financial windfall. But sadly, none of Andrew's or mother's actions to date bear this out.

179 This five page document produced by Julie explaining the background to her request for advice from Mr Oates is an important contemporaneous document. I note Julie's reference to there having been "a family understanding" that, if it came to selling the farm assets, the sale proceeds would be split between the five siblings. Julie does not make any reference to Shirley's alleged promises in this context. Moreover, the family understanding to which she refers - which is not particularised in any way - is supposed to have extended to any sale of farm land. The final section of the document, which refers expressly to the windfall sale of

the Netherton Moor land for housing, is consistent with Julie and Tom's evidence of what was said by Shirley in the course of their heated exchange on 28 December 2015. It simply records Shirley as having said that the costs Julie had incurred with Mr Hartley would be reimbursed and that Andrew had said his sisters would be looked after in any financial windfall.

180 On the same day as his meeting with Julie and Tom, 9 February 2016, Mr Oates spoke to the family accountant, Richard Hall, to discuss the tax implications of the Persimmon option. They discussed possible steps to be taken to minimise tax, including whether the parties could sign a declaration of trust to reduce the value of Shirley's interest as she was then 82 years old. Mr Oates' note records that dealing with it by way of a declaration of trust would avoid any requirement to involve Persimmon. Mr Hall and Mr Oates agreed that in view of the complexity of the tax position and the potential problems within the family, it would be advisable if the two of them went to see Shirley initially so that they could consider what steps she would like to take before it was put to Robert and Andrew and the wider family.

181 On 11 February 2016, John Oates wrote to Shirley summarising the questions which Julie had raised (which Mr Oates records Julie as having said applied to both her and Gillian but says he is not sure what Virginia feels) as follows:

1 How are they to get recognition and parity for their contribution to the farm business?
2 How are they to benefit from the sale of the farm land and assets, now that Robert and Andrew are no longer farming?
3 How are they to ensure that they benefit from the windfall sale of the Netherton Moor land?

In the same letter Mr Oates refers to his discussion with Richard Hall and continues:

Because the points being raised by Julie give rise to the question as to whether you would want to consider dealing with your interest in that land in some way and/or making amendments to your Will, I think it will be appropriate if Richard and I could see you to discuss this in more detail before opening it up to a more general discussion involving Robert and Andrew and other members of the family.

182 On 12 February 2016, Shirley spoke to Mr Oates on the telephone and confirmed she had received his letter of 11 February. Mr Oates' attendance note continues:
She is unhappy at the way Julie has been acting and she had already spoken to Robert and Andrew. She wanted to know why I thought it was appropriate for Richard Hall and I to go and see her on her own and I said that this was so that we could discuss any matters which arose which would involve consideration of making changes to her Will and dealing with other matters, but she said that this is not her intention and she wants any meeting to include Robert and Andrew.

183 This note therefore records Shirley having discussed with Mr Oates his request that he and Mr Hall see her on her own without her sons being present and Shirley's express instructions to Mr Oates that she wanted any meeting to include her sons.

184 On 11 March 2016, Mr Oates and Mr Hall met with Shirley, Andrew and Robert at Ouselea Farm. There was a discussion of the tax implications regarding the option agreement on the Netherton Moor land. Mr Oates' attendance note records that:

> … it would seem sensible for [Shirley's] interest in the property at Netherton Moor to be disposed of in whole or part by gift and a Declaration of Trust during her lifetime.
> It is a matter for [Shirley] to decide and it was left with her to give this consideration, the options being:
> 1 To do nothing with her share of the land, which would mean that there would be a capital gains tax uplift on her death, which would not really be relevant if it still had [agricultural property relief] but would avoid CGT on her death if it did not.
> 2 To transfer her interest in the land to Robert and Andrew.
> 3 To transfer some or all of her interest in equal shares to her five children, so that Robert and Andrew's shares in the land would increase but her daughters would acquire an interest.
>
> The third option, to some extent, cover the concerns which Julie Mate had expressed to me when she came to see me last month, and which I put to the family on the basis of the three points mentioned in the letter of 11 February to [Shirley], which had also been seen by Robert and Andrew. As recorded in the note of the telephone conversation on the 12th February I had suggested to [Shirley] that Richard Hall and I wanted to see her on her own to discuss the matter but she had insisted that she wanted Andrew and Robert to be present at the meeting.
> None of them think there is any validity in the points which Julie is making and Mrs Mate, in particular, is angry that she has raised the matter in this way, although Andrew did say that it was intended that the girls would receive some benefit from any windfall payment and it is accepted that any expenses which Julie had incurred with the agent to whom she refers in the letter, would be reimbursed. …
>
> For the moment they simply want me to write to Julie and say that I have passed on her concerns to the family.

185 On 15 March 2016, Mr Oates wrote to Julie indicating that he had passed on her concerns to the family. On 23 March 2016, Andrew spoke to Mr Oates whose attendance note states:

> They have had further discussions with his mother since our meeting earlier this month and, so that they retain the benefit of Entrepreneurs Relief as far as possible for CGT his mother has agreed to transfer all of the land in the farming business which she has an interest to Robert and Andrew. …
> He says that they have discussed his sister's situation with the accountants and the best proposal will be for him and Robert to make gifts to them if the land at Netherton Moor

is sold; provided that they lived for seven years after the date of the gift this will not have any effect for CGT or IHT.

186 On 15 April 2016, Mr Oates spoke to Shirley and raised with her the instructions given by Andrew that she was to transfer her interest in all the land, including the Netherton option land, to Robert and Andrew on the basis that this would provide a tax benefit in relation to Entrepreneurs Relief. Mr Oates' note records that Shirley said she was not aware that the proposal was to extend to all of the farm land as she thought it was the Netherton Moor land only that was being considered. Mr Oates agreed to speak to Mr Hall. His note further records: "If it is going to be advantageous from the point of view tax [Shirley] is willing to proceed on this basis".

187 Mr Oates then spoke to Mr Hall on 22 April 2016 who confirmed that, in order to be effective for Entrepreneurs Relief, Shirley would have to give up all her interest in the farming business and he was not sure whether Shirley intended to do this. Mr Hall agreed to prepare a note on the tax position which would be circulated to ensure all clients were in agreement with the proposals.

188 On 5 October 2016, Richard Hall prepared his note on the tax position which was given to Shirley, Robert and Andrew by Mr Oates when he met with them in Shirley's flat at Ouselea Farm on 7 October 2016. Mr Oates' attendance note records that he reminded them that, ignoring a small part of the land included in the Persimmon option which belonged to Robert and Andrew alone, the current position in relation to the land included in the Persimmon option was that it was held on trust for sale with them as tenants in common on the basis that on a sale Shirley would receive 50% and Robert and Andrew would receive 25% each. The attendance note continues:

> Both Robert and Andrew consider that the whole of the farmland should be given to them so that they would hold it as tenants in common in equal shares although they accept that on a sale of the Persimmon land their sisters would receive something. The intention would seem to be that they would make gifts of cash from the proceeds of sale on the basis that this would not give rise to any tax. I confirm that there will be no capital gains tax arising on such a gift but it would be a potentially exempt transfer for inheritance tax purposes so that in the event of death within seven years of making the gift it would be clawed back or part of it would be clawed back for IHT purposes.
> Mrs Mate expressed some unhappiness with this proposal although it was one of the items which had been discussed in March, and would be beneficial for tax purposes on the basis that her interest in the land was disposed of while it was still based on an agricultural value and would qualify for agricultural property relief, which would not be the case once a binding agreement was entered into for the sale of the land.
> There was also some discussion as to whether Mrs Mate might transfer her share in such a way that her daughters would receive some part of the land, although this is going to be complicated for the continuation of the farm business and is something which Andrew and Robert are not keen on. …

189 The meeting on 7 October 2016 ended with Andrew suggesting they give the matter consideration for a few days and Shirley confirming it was in order for Mr Oates to communicate with Andrew via email who would keep his mother and brother informed of the position.

190 On 11 October 2016, Andrew telephoned Mr Oates with instructions that he and his brother had had conversations with Shirley and she had confirmed her intention to transfer her interest in the Persimmon option land to Andrew and Robert. Mr Oates said he would prepare a Declaration of Trust to record that the property would then be held as to 50% for each of Andrew and Robert.

Confirmation of Netherton Moor sites in the draft Local Plan

191 On 7 November 2016, the Netherton Moor sites were confirmed in the final draft version of the Local Plan and consultation on the published draft Local Plan commenced.

192 On 7 December 2016, Julie wrote again to Mr Oates updating him on the inclusion of the two Netherton Moor sites in the final draft version of the Local Plan. In the final section of her letter headed "Fair Treatment", Julie stated as follows:

> As you are aware communication amongst the Mate family members has been strained since my father died and I have still heard nothing from my brother Andrew or mother in relation to the concerns I raised regarding the equitable treatment of the sisters.
> My mother has previously said that 'the sisters will be looked after financially', but I still haven't received any evidence that we will benefit from the considerable windfall that is likely to result from selling the family's land at Netherton Moor - and any other of the farm's land for that matter.
> As my letter of 26 January has gone unanswered by the family, I can only assume that there is no tax efficiency planning in place and no mechanism set out to benefit the sisters.
> I would appreciate any information that could shed light on the situation.

193 This letter from Julie to Mr Oates is consistent with what she had told him in previous communications. It is significant that it makes no reference to Shirley's alleged promises and only goes so far as to say that her mother had said "the sisters will be looked after financially".

Execution of the declaration of trust

194 On 9 December 2016, Mr Oates met with Shirley, Andrew and Robert at Shirley's property and read out the declaration of trust which was then signed by the three of them and witnessed in Mr Oates' presence. Mr Oates' attendance note records that he explained its effect was to transfer the 50% beneficial ownership in land owned by Shirley to Andrew and Robert in equal shares.

195 The final section of Mr Oates' attendance note of this meeting on 9 December 2016 states:

> I reported to them that I had received a letter from Julie this morning and I left copies with them so that they could consider this. Mrs Mate said she is not prepared to speak to Julie about this any more and their immediate view is that the letter should be ignored but Andrew said that they would give it some thought and let me know if there was anything to say at this stage.
> They think that Julie feels they have not taken any advice about the matter, whereas they have.
> I confirmed that neither Julie nor his sisters had any legal claim in relation to the land since the beneficial ownership rested only with the three of them, and the effect of the Declaration of Trust had no impact on position of the daughters who only had, at best, a moral claim in relation to any proceeds of sale of the land.

196 Shirley says in her witness statement that Andrew and Robert told her she needed to sign the declaration of trust document in order to help save tax. She thinks it was Andrew who said that it was for capital gains tax. She says she signed the document because she thought it was to help with tax and no one explained to her what the effect of the document was. She says that, if she could have transferred the land, she wanted to share any land she had with the girls in equal shares. So, if she had received £5,000,000 from the sale of the land, she would have shared this equally between her daughters and herself "to balance things up" but "at the time nothing was explained to me".

Further planning steps

197 On 19 December 2016, NLP, Persimmon's planning consultants, submitted detailed representations to the Council supporting the inclusion of the Netherton Moor sites in the draft Local Plan. The submission covered such matters as heritage, highways and access, surface water, flooding, landscape and Green Belt. Persimmon sent a copy of this document to Andrew.

198 On 25 April 2017, the Council's draft Local Plan was submitted to the Planning Inspectorate for examination.

199 The draft Local Plan was considered by the Inspector between October 2017 and March 2018. In September 2017, NLP submitted hearing statements on behalf of Persimmon designed to support a finding by the Inspector that the Local Plan should be found sound. The Local Plan stage 4 hearing sessions took place in February and March 2018. In advance of those sessions, Mr Hartley wrote a letter dated 25 January 2018 which he asked to be put before the the Inspector, referring to the representations he had made on Julie's behalf since 2008 and supporting the inclusion of the Netherton Moor sites in the Local Plan.

Julie's letter of claim and subsequent events

200 On 27 September 2018, Julie's solicitors, CRS, sent a lengthy letter to Shirley, Andrew and Robert asking them to supply copies of various documents including the Persimmon option agreement and setting out the basis on which CRS asserted Julie could bring claims against them on the basis of constructive

trust, unjust enrichment and estoppel.

201 On 2 November 2018, Andrew met with Gillian and asked her to sign a document in Shirley's presence declaring that she did not agree with the claims made by Julie in CRS's letter of 27 September 2018. The second paragraph of the document which Andrew asked Gillian to sign read as follows:

> Furthermore any promise of "seeing the girls right" only applied to the sale of Netherton Moor land for building and was always at the discretion of Robert, Andrew and Shirley Mate.

202 Gillian refused to sign the document and wrote to Andrew on 7 November 2018 saying she was shocked by what she described as his "bullying, haranguing, threats and even attempted blackmailing of me into signing your document whilst Mum looked on". She complained that Andrew had threatened that if she did not side with him, Robert and Shirley, she would be on Julie's side and liable for payment of her solicitor's fees if Julie defaulted. She said she had sympathy for Julie due to the appalling way she had been treated which had put her in a situation where she believed she was no longer part of the family and had nothing to lose. Gillian's letter concluded by saying she had no intention of taking sides.

203 There was then a meeting on 21 December 2018 at Gillian's home in Doncaster attended by Robert, Julie, Tom, Gillian and her husband Hubert. Tom took manuscript notes at the meeting which he typed up shortly afterwards. Robert told them that neither Andrew nor Shirley knew he was coming to the meeting. It was a heated and ill tempered meeting, with emotions running high on both sides. In the course of the meeting, Robert said that if he and Andrew got a substantial amount of money from the sale of Netherton Moor land, the girls would get a share. However, he said it was very uncertain that they would get any money. He made Julie an offer from him alone, part of which involved payment of a maximum of £3,000 for her planning fees up to the point when, according to Robert, Andrew told Julie to stop. Julie disputed this and asked Robert when Andrew told her to stop. Robert also offered to pass to the girls any leftover money from the sale of the Netherton Moor land after he had bought a farm into which he could rollover his proceeds. Julie told Robert that, without her work and that of her planning consultant, there would have been no prospect of getting the land out of the Green Belt designation and no hope of development. Robert told her it was a take it or leave it deal. The meeting ended without any resolution having been reached.

204 On 9 January 2019, solicitors instructed only by Andrew at that stage, Chadwick Lawrence LLP, responded to CRS's letter of 27 September 2018 stating that Julie's claim was wholly unmeritorious and seeking details of the assurances which Julie said she was given.

205 On 11 January 2019, Gillian sent a letter by email to Robert in which, in response to a request from Robert who had been to see her, she sought to explain where she stood in the "legal argument" he and Andrew had with Julie. Gillian makes the point that she did not want to take sides and would only get involved if she could be a link between the two sides. She says: "I have never heard her [Julie] talk about 'family land' before … I have no legal interest in Netherton Moor or any other part of your farm. Hubert and I have not built our retirement on any expectation that we will benefit financially from the farm".

206 The correspondence between solicitors continued. In a letter dated 14 March 2019, CRS provided what they called a "schedule of assurances" said to have been given by Shirley to Julie. Some of those assurances relate to the sale of land at Linthwaite and are not relevant to the Netherton Moor land. Moreover, the principal assurance relied on in his schedule is Shirley having said that "all the siblings would benefit from any funds if [Andrew and Robert] could no longer 'make a go of it and the farm's assets were sold'". This assurance was said to have been made on a number of occasions during Julie's regular telephone calls with Shirley on Sunday mornings and it does not expressly link the assurance to the planning work carried out by Julie until it refers to the visit to Shirley on 28 December 2015.

207 On 24 March 2019, Gillian wrote to Robert referring to CRS's letter containing the "schedule of assurances" of 14 March 2019, making it clear that Shirley did not make any representations to her, that she did not have any expectation that she would benefit beneficially from the farm and that the statement passed to her by Shirley that "Andrew has said the girls will be looked after" (which she assumed referred to income from the Netherton Moor land) came as a pleasant surprise but with no expectation that it would happen soon or needed to be in writing.

Adoption of the Local Plan and Persimmon's planning application

208 The Local Plan was adopted at the end of February 2019 after a series of modifications were made by the Council to address some concerns raised by the Inspector. None of these concerns affected the Netherton Moor sites which were retained in the Local Plan and given new reference numbers (HS19 and HS21), thereby establishing the principle of housing development on those sites. Persimmon made a planning application for 250 dwellings in October 2019 which was recommended for approval by the planning committee in September 2020. The planning application was subject to almost 800 individual written objections, which was reported in the local press as being the highest number of objections received on a single application. However, as the site was allocated for housing, the principle of development had been established and the application was approved by the Council in April 2021.

Julie's contact with Shirley in March and April 2020

209 Julie sent a card to Shirley (in manuscript capital letters) on about 8 March 2020 which stated as follows:

> Further to the promises to me that you've made over the years, I'm writing to find out when I'll be receiving my promised share of the family land sales, particularly in relation to the family's land on Netherton Moor for housing.
> This is the project that I started in 2008 and subsequently worked on and funded for 10 years with the expert help of Duncan Hartley. It was Duncan who made the vital Council submissions and put the winning arguments forward to free the land from Green Belt and achieve approval for housing.
> Persimmon Homes have subsequently put in for planning permission for 215 houses which will be granted very soon. I am therefore keen to find out how the family's windfall of many millions - which is thanks to my work - will be divided.
> As you are aware, I wasn't left much by father, and my own wealth today extends to two old cars, some furniture and two horses. At the same time, Tom's farm barely makes a profit and is weighed down by heavy borrowings.
> I'm trying very hard not to go to court about this important matter - particularly as you will be required to give evidence on behalf of the family in court and all of the family's private matters will be exposed to public view.
> You are the majority landowner in the farm partnership and have the power to divide fairly and amicably - and at the same time help put this family back together again.
> Please don't waste it!
> We are a private family and with your help, matters can be resolved without court action.
> You can phone or write, or I shall call in to see you over the next few weeks.

210 Prompted partly by Julie's card and partly by the receipt of a bunch of flowers which Julie had sent Shirley for Mother's Day, Shirley decided to telephone Julie in late March or early April 2020. This was a significant telephone call because the two of them had barely spoken since the meeting at Shirley's house on 28 December 2015 when Shirley told Julie and Tom about the deal that she, Andrew and Robert had done with Persimmon. In the intervening four years, Julie had stopped making her regular Sunday morning telephone calls to Shirley.

211 Julie put Shirley's call on speakerphone so that Tom could listen in. Tom described it as a "good 20 minutes of catch up on family news, grandchildren and that sort of thing" before Julie mentioned the sale of the land to Persimmon at which point Shirley is alleged to have said that everyone had agreed that whenever the land was sold, the proceeds would be shared equally with her children. Julie's evidence was in similar terms. She recalled her mother saying that she didn't know what all the fuss was about as everyone had agreed that whenever the farm's land was sold it would be shared equally with her children, so she (Shirley) could not understand why she was now receiving letters from Julie's solicitors.

212 What neither Tom nor Julie mention in their witness statements, but which they accepted in cross-examination, is the fact that this call did not end on amicable

terms. It ended with Shirley putting the phone down on them. This incident is referred to in an attendance note of Mr Oates made on 21 April 2020, in which Mr Oates records:

> [Shirley] had a bunch of flowers from Julie for Mother's Day, and as she did not have a card to send she rang Julie; initially they had a friendly conversation but then Tom came on the line and the issues of Julie's claim to one fifth of the farm came up again, which resulted in her putting the phone down. Now she has received a letter from Julie threatening High Court action.

213 A week or so after this phone call, Julie wrote a further letter to Shirley dated 9 April 2020 which stated as follows:

> It was good to catch up with you and the family news last week and to hear that you're being well looked after during the Coronavirus lockdown.
> I'm also pleased that we were able to talk a little about the card that I sent to you in early March and about the Netherton Moor land in particular.
> To be assured of your promises, that the proceeds from the sale of the Netherton Moor land will be shared equally (as you repeated once more during our conversation), I will actually need your confirmation in writing - through a solicitor (John Oates if you wish). This is important.
> To keep it relatively straightforward, you don't have to involve Andrew and Robert at this point and, if a formal agreement can be reached with the help of John Oates, there won't be a need for any family meetings.
> Just to be clear - and so that you know my understanding of the position - based on your promises of equal shares, I will receive a sixth of the sales proceeds from the sale of land on Netherton Moor, representing an equal split between the five siblings and yourself.
> I'm not a party to the option agreement that you have accepted from Persimmon Homes - and it is possible that further negotiation is required before a sale value is finally agreed. However, for the purposes of my claim, a Savills property agent (who covers the Kirklees area and is up to speed with Persimmon-type option agreements and valuations in the locality) has provided an approximate valuation for the two Netherton Moor sites (20.26 acres) of between £9,000,000 and £10,000,000 (after deductions for Open Space, Community Infrastructure Levy and other development costs).
> You will agree, that this is a considerable windfall for the family which I initiated and helped realise through my own and Duncan Hartley's work that I paid for over many years.
> PLEASE DO HEED THIS LETTER.
> I do need a reply from you by the end of April (30th April) at the very latest to be able to progress a formal agreement.
> If I do not hear back from you by this date, I will have no choice but to start formal proceedings and will instruct my solicitors to submit my High Court Claim. … I enclose a draft copy of the High Court Claim for your information …
> Again, I'm really very sorry it has had to come to this, but I'm hoping that common sense and some motherly wisdom will win out!

214 Andrew and Robert point out that Julie's letter of 9 April 2020 contains the first documentary reference to an allegation that Shirley made promises that Julie would receive a one sixth share of the sale proceeds of the Netherton Moor land.

They submit that this allegation was prompted by Julie having received, prior to that date, a copy of the draft particulars of claim which she enclosed with her letter to Shirley. Those draft particulars of claim (which were disclosed after the end of oral evidence and attached to Andrew and Robert's written closing submissions) refer in general terms (in paragraph 27) to Julie having acted "in reliance upon the promises made to her by Shirley that if the land was sold she and her sisters would be given an equal share in the net proceeds of sale of the land".

215 However, the draft particulars of claim make no reference to a further specific allegation of Shirley promising equal shares which is pleaded in the final version of the particulars of claim as served, signed by Julie on 14 May 2020. Paragraph 14 of that document states: "Shirley's promise of equal shares has been repeated over the years and restated as recently as 30 May 2020 when Shirley said to Julie "Everybody agreed that we would, when we sold whatever we're selling, that it would be equally shared"".

216 Given the date on which Julie signed the particulars of claim (i.e. 14 May 2020), the date of 30 May 2020 in paragraph 14 of the particulars of claim was obviously incorrect and in her evidence in chief Julie corrected a similar error in paragraph 50 of her witness statement in order to make clear that she had been intending to refer to the telephone call with Shirley in late March or early April 2020 which preceded her letter of 9 April 2020.

217 Andrew and Robert invite the court to conclude that the reason Julie mentioned a promise of equal shares for the first time in her letter of 9 April 2020 is because she realised, having taken legal advice and seen what the particulars of claim would need to plead, she needed to allege that specific promises had been made to her in order to make good her claim. I see the force of that submission, given the lack of reference to specific promises alleged to have been made by Shirley in Julie's previous written communications.

218 Shirley did not respond to Julie's letter of 9 April 2020. Mr Oates records in his attendance note of his conversation with Shirley on 21 April 2020 that "it was probably best if she just ignored the letter, which of course she has found upsetting and annoying".

Issue of claim and Shirley's query regarding declaration of trust

219 Julie issued the claim against Shirley, Andrew and Robert on 14 May 2020. Robert filed his defence in August 2020. On 11 September 2020, Mr Oates received a telephone call from Shirley which he recorded in his attendance note as follows:

She rang to check the position in relation to Netherton Moor because she said that Robert, who is dealing with the barristers in relation to the claim by Julie, has said that Netherton Moor no longer involves her although she thought it did. I explained that the legal title was still vested in all three of her, Robert and Andrew, but the Deed of Gift which she had made some years ago was to transfer her beneficial interest in the land to

> Robert and Andrew so in that sense she was no longer one of the beneficial owners. I confirmed that the transaction had been carried out largely for tax reasons on the advice of accountants.

220 Some four months later, on 29 January 2021, Shirley called Mr Oates again to ask whether she had any interest in the Netherton Moor land. Mr Oates' attendance note states as follows:

> She rang to ask the position in relation to the land at Netherton Moor which is subject to the Option to Persimmon, specifically as to whether she had any interest in the land.
> I said that although she remained one of the legal owners the beneficial ownership had been assigned to Robert and Andrew in 2016 following discussions which had taken place that year involving Richard Hall. She said she thought it was only done for tax reasons, and I confirmed that the tax implications were one of the factors involved in it. She mentioned the possibility of leaving the interest to all of the children but I said that by virtue of the Declaration of Trust which had been made in 2016 the beneficial ownership was now held by Robert and Andrew and she did not have any interest in the property.

221 Andrew and Shirley's defences were filed in February 2021, shortly after this conversation between Shirley and Mr Oates. As mentioned at the start of this judgment, Shirley's defence denied Julie's claim in its entirety. The first indication that she was no longer maintaining such denial came when her witness statement dated 9 May 2022 was served by Julie's solicitors. Shirley sent a letter to the court dated 30 May 2022 indicating that she was acting as a litigant in person and on 20 June 2022 she applied for permission to amend her defence by striking out the original defence and stating that she admitted Julie's claim. She was given such permission at the pre-trial review on 26 July 2022.

222 That completes the chronology.

Julie's proprietary estoppel claim: has an equity arisen?

223 The first issue I have to decide is whether Shirley made promises of sufficient clarity to Julie that it was reasonable for Julie to rely on those promises.

224 Julie's pleaded case as regards promises made to her by Shirley appears in three paragraphs of the Particulars of Claim.

224.1 In paragraph 12 it is said that from the late 1990s Shirley made promises to Julie that in the event the farmland was sold the proceeds would be shared not only between her and Andrew and Robert but with the three daughters as well.

224.2 Paragraph 13 states that Shirley on several occasions from 1998 to 2003 said to Julie and/or her sisters that "she couldn't see anything happening

at that moment but that if anything happens to the farm then the girls would be looked after".

224.3 Paragraph 14 refers to two more specific alleged promises: on 4 January 2004 when Shirley is alleged to have said to Julie that if it "comes to the sale of the farm, the money will be shared with the girls. You would all be treated the same" and on 22 February 2004 when Shirley is alleged to have said to her "Any money [from a sale of the land] will need to be shared with the girls". It is then said that Shirley's promise of equal shares has been repeated over the years and was restated as recently as 30 May 2020 (corrected in Julie's oral evidence to late March/early April 2020) when Shirley said to Julie "Everybody agreed that we would, when we sold whatever we're selling, that it would be equally shared."

225 So the pleaded case relied on two specific promises in 2004 and one specific promise from 2020 as well as generic promises made from the late 1990s until 2003 about proceeds of sale being shared, or the girls being looked after/provided for and promises of 'equal shares' repeated 'over the years'. In her witness statement, Julie put the specific promise alleged to be made to her by Shirley on 4 January 2004 as being made on Christmas Eve 2003. She also said Shirley made another specific promise to her on 8 May 1999 that "any sale would be shared".

226 Starting with the position prior to 2008, I do not consider that any promises made by Shirley to Julie, whether specific or generic, were ever clear enough to entitle Julie to believe that she would be receiving an equal share (whether a one fifth or one sixth share) of the proceeds of sale, either of farmland generally or the Netherton Moor land in particular. I accept it is entirely possible that Shirley may have made general comments over the years that she expected her daughters to benefit if farmland ever came to be sold but I find that she did not specify what share of the proceeds her daughters could expect to receive nor did she make any promise which was intended to bind Andrew and Robert. In the circumstances, whatever was said by Shirley to Julie was too vague and unspecific a promise for it to have been reasonable for Julie to rely on it. Nor is there any evidence that Andrew and Robert were aware of what Shirley may have said to Julie so they could not be taken to have agreed to whatever vague assurances Shirley may have given Julie in any event.

227 In the period both before and after 2008, there is no documentary evidence to support Julie's suggestion that the specific or generic promises which she alleges were made to her by Shirley were in fact made. On the contrary, the documents emanating from Julie herself at various times from 2008 onwards strongly suggest that no promises of sufficient clarity had been made to her by Shirley

because, in the context in which those documents were written, if such promises had been made to her, Julie would have referred to them.

228 I start with Julie's letter to her sisters in May 2008. This is an important letter because it comes at a time when Julie was embarking upon the work which is central to her claim.

229 Andrew and Robert submit that Julie's letter to her sisters is clear evidence that as at 27 May 2008 no promises had been made to Julie by Shirley. They submit that, had Shirley made promises of equal shares of the kind contended for by Julie before she came to write this letter to her sisters, the letter would have been couched in very different terms and would not have referred to Julie attempting to "tip the balance a little in our favour". I agree with this submission. It is clear from the terms of this letter that while Julie hoped, and no doubt expected, Shirley to give each of her daughters a share of the land sale proceeds, all that Shirley had done by that stage was to pass Julie's suggestion on to Andrew and obtained his agreement that the suggestion should be pursued. Julie would not have spoken of anticipating quite a lot of resistance from her brothers "and even mother" if Shirley had already promised her that she and her siblings would receive equal shares in the eventual sale proceeds. The terms of Julie's letter to her sisters are simply inconsistent with any such promise or assurance having been made to her by Shirley before that letter came to be written, certainly not a promise of sufficient clarity to enable it to be relied upon.

230 There is then a gap of over six years before the next relevant document which is Julie's letter to Shirley dated 14 June 2014. By the time this letter was sent, the core work undertaken by Mr Hartley and Julie had been done and the 'angry call' with Andrew had taken place. Whilst this letter was about the family home as opposed to the Netherton Moor land, the letter is nevertheless important both for what it does say about Shirley's ability to right perceived wrongs in the family and what it does not say about promises. In particular, Julie refers to Shirley struggling very hard with the concept that her daughters "have a personal – and dare I say – even a moral stake in the farm … and deserve to be recognised". This was plainly an opportunity for Julie to refer to the promises which she says Shirley had made to her as pleaded in this case but she does not do so. The reference to Shirley's "struggle" with the idea is inconsistent with Julie's case as to Shirley's promises and attitude. Equally, if Shirley had already promised Julie that the proceeds of sale of the Netherton Moor land would be shared equally between the six members of the family, this was an obvious opportunity to remind her of that promise, given Julie's concern that her mother seemed to be going back on a promise she had previously made in relation to the family home.

231 Nearly 18 months later Julie sent her letter to Andrew on 21 December 2015, copied to the rest of the family, in which Julie says to Andrew: "you did agree, sometime ago, that if it came to selling the farm's land and property assets that they should be shared amongst all of the siblings". As considered above (para 158.2), it is not clear when Julie is saying that Andrew reached this agreement and I have held that there is no evidence of any agreement having been made between Julie and Andrew. In any event, Julie is not relying in this claim on any promise alleged to have been made to her by Andrew and there is no mention in this letter of Shirley having made promises of which Andrew and Robert were aware, whether of equal shares or otherwise. Had any such promises been made to Julie by Shirley on which she relied, this letter would have been the obvious time to refer to them.

232 Just over a month later, Julie sent her further letter to Andrew dated 26 January 2016, again copied to the family. The letter acknowledges that "family communications have never been that good" and that Julie is "pleased to hear from mum that you said that 'the three sisters will be looked after financially'". That is the extent of Julie's reference to any promises or assurances and this reference is an assurance alleged to have been made by Andrew to Julie, communicated through Shirley. Julie is asking for "some evidence that we [the three sisters] will be treated fairly in the considerable windfall that may result". She is seeking comfort from Andrew by reference to the concept of the three sisters being "looked after financially". There is nothing in this letter about promises of equal shares, or promises of any kind from Shirley, despite these promises allegedly having been made on numerous occasions over the previous 16 years. Julie is referring to what she was told by Shirley during her and Tom's post-Christmas visit a month before this letter was written. I find that, whatever assurance Shirley sought to give Julie during their heated exchange on that occasion, it was not that she or Andrew would agree to divide the proceeds of sale of the Netherton Moor land equally between her and her children.

233 This finding is corroborated by the contents of Julie's five-page document which she prepared for her meeting with Mr Oates on 9 February 2016, which records Shirley as having said on 28 December 2015 that the cost Julie had incurred with Mr Hartley would be reimbursed and that Andrew said his sisters would be looked after in any financial windfall. Julie's meeting with Mr Oates on 9 February 2016 was an ideal opportunity for her to raise with Mr Oates the alleged promises from Shirley on which she relies, given that Mr Oates was an independent third party from whom she was expressly seeking advice about her position. Julie's document simply refers to the limited "positive feedback" she had received from Shirley and makes no suggestion that this is at odds with promises made to her by Shirley over many years.

234 Julie's 'fair treatment' letter to Mr Oates of 7 December 2016, written some 10 months later, again fails to mention any of the alleged promises made to her by Shirley. The letter states that "communication amongst the Mate family members has been strained since my father died and I have still heard nothing from my brother, Andrew or mother in relation to the concerns I have raised regarding the equitable treatment of the sisters". I consider that the true extent of the promises made by Shirley emerges from this letter where Julie tells Mr Oates that "mother has previously said that the sisters will be looked after financially but I still haven't received any evidence that we will benefit from the considerable windfall that is likely to result from selling the family's land at Netherton Moor". In other words, and I so find, Shirley is likely to have said to Julie - and most probably Virginia and possibly Gillian as well - that her daughters would be "looked after financially" if a windfall was achieved on the sale of the Netherton Moor land but her promise or assurance went no further than that. It was not a promise or assurance of sufficient clarity for it to be reasonable for Julie to rely upon in order to raise an equity for the purposes of the doctrine of proprietary estoppel.

235 It was not until Julie sent her handwritten card to Shirley on 8 March 2020 that she made her first explicit references to "promises to me that you've made over the years". This was some 18 months after her solicitors had sent a letter to Shirley, Andrew and Robert raising the prospect of an estoppel claim and two months before her claim was issued. Even then, Julie is vague about the nature of the promises Shirley is alleged to have made, referring to Shirley having "the power to divide the windfall fairly and amicably … I am therefore keen to find out how the family's windfall of many millions – which is thanks to my work – will be divided". This suggests that Shirley had not promised to divide the windfall into equal shares.

236 The first time that Julie refers to Shirley having promised that the proceeds from the sale of the Netherton Moor land would be shared equally between Shirley and her five children is in Julie's letter of 9 April 2020 enclosing draft particulars of claim. That letter was sent after a telephone call between them which had ended with Shirley putting the phone down on Julie. I find that by this time Julie had convinced herself that Shirley had promised her that the sale proceeds of the windfall would be shared equally in this way when in fact Shirley had never made such a specific promise. Nor do I consider that Shirley was ever specific about what proportion of the windfall she and her daughters would receive. I find that on the occasions when Shirley spoke to Julie about the sale of farmland in general, and the sale of the Netherton Moor land in particular, she referred to the daughters being looked after financially but was never specific about what share of the windfall proceeds she hoped to pass to them.

237 Accordingly, the fact that no promise of sufficient clarity was made by Shirley to Julie means that no equity arises on which Julie is able to found a claim in proprietary estoppel. Given that Julie has failed to establish that a sufficiently clear promise or assurance was made to her by Shirley, it follows that she cannot have relied on any such promise or assurance and the issues of reliance and detriment do not fall to be considered.

Julie's claim in unjust enrichment

238 It is Julie's case that (1) she took steps to remove the Green Belt restriction on the Netherton Moor land and to gain its allocation for residential development; (2) Shirley, Andrew and Robert encouraged her to take those steps when they knew or should have known she was not acting gratuitously; (3) those steps caused the Green Belt restriction to be removed and the land to be allocated for housing; (4) Shirley, Andrew and Robert have therefore been unjustly enriched; and (5) Julie is entitled to restitutionary damages equal to a share in the proceeds of sale or such other compensation as the court thinks just.

239 Given that Shirley, Andrew and Robert have not sought to rely on any defences, three questions need to be considered: (1) have they been enriched? (2) was the enrichment at Julie's expense? (3) was the enrichment unjust? If the answer to each of those questions is in the affirmative, it is then necessary to consider (4) the appropriate remedy.

(1) Have Shirley, Andrew and Robert been enriched?

240 Andrew and Robert accept that Julie transferred "some value to them" through the work that she did. However, they raise two matters. First, they say that Julie's inability to advance her claim by reference to work done on brokering a deal to sell the land or obtaining planning permission means that the value of the work she did is significantly limited. Second, they say that Julie was acting gratuitously.

241 In relation to the first matter, there can be no doubt that Shirley, Andrew and Robert have been enriched as a result of the work undertaken by Julie, with Mr Hartley's assistance, to remove the Green Belt restrictions on the Netherton Moor land and to gain its allocation for residential development. Mr Spawforth's report accepts that they made "a limited contribution to the release of the Green Belt restrictions and allocation as residential housing sites H102 and H660". I consider below in the context of the appropriate remedy the effect and impact of that work.

242 As to the second matter, there can also be no doubt that Julie did not do this work gratuitously. Andrew and Robert's pleaded case was that it would have been natural for Julie as a family member to do what she did gratuitously, without any anticipation of reward. Andrew asserted in his witness statement that he thought "Julie was helping us because she was more fortunate than us". I find that, given the nature and context of his dealings with Julie from 2004 onwards, Andrew did not for one moment believe that statement to be true. Robert claimed to recall that, in the conversation he had with Julie at the funeral tea in 2004, he asked her what it would cost and "how you can afford this because we can't" to which Julie is alleged to have replied that she "was rich enough and didn't need the money". I do not accept that this recollection is accurate or that the conversation took place in the terms described by Robert.

243 I accept Julie's evidence that at no time did she tell either of her brothers or Shirley that she would work on this project for nothing, without expectation of any reward. On the contrary, as I have already held, from the time when the issue was first raised by Julie with Shirley, Andrew and Robert in 2004, Julie was clear that she saw the possibility of developing part of the farm as a way she and her sisters could benefit. When the matter was raised again in earnest by Julie in 2008, her separate discussions with all three of them left them in no doubt that she expected to benefit from the sale proceeds if the land was sold for development. Her intentions and state of mind at the time are clear from the letter she sent to her sisters on 27 May 2008. The fact that I have found Shirley did not make a sufficiently clear promise or assurance to Julie as to what share of the windfall she could expect to receive in return for her services is irrelevant to this question.

(2) Was the enrichment at Julie's expense?

244 I find that the enrichment was at Julie's expense. That is plain in the case of Mr Hartley's fees which Julie has paid and which have not been reimbursed by Andrew or Robert. It is equally plain in the case of the services Julie herself performed as considered below.

245 Julie's activity log estimates that she spent over 90 hours on activities associated with this project between 2002 and 2007. A small proportion of these hours might arguably be said to relate to the Netherton Moor project (such as Julie's letter to Shirley, Andrew and Robert dated 25 March 2004 and research into the Council's Local Plan review process). However, I do not propose to take any of these hours into account since it is clear that most of them relate to work that Julie was doing through her employer at the time or making visits to friends and did not amount to time spent exclusively or even principally for the purposes of the project.

246 Julie's work started in earnest in early 2008 with research into the Council's LDF and the identification of Mr Hartley as a suitable planning consultant. She provided an introductory briefing to Mr Hartley in her email of 28 April 2008 and had several discussions with him prior to and after the site meeting which she was responsible for arranging. She liaised with Shirley, Andrew and Robert and Mr Hartley in setting up the site meeting on 23 June 2008 and attended that meeting. The work that she did between August and December 2008, in researching, coordinating, obtaining information (including from Andrew and his wife) and drafting the submission that she and Mr Hartley made to the Council in response to its Call for Sites was a substantial piece of work. Julie did the lion's share of this work and I do not doubt her estimate of 80 hours' work in that regard. Andrew accepted in cross-examination that this submission involved a lot of work.

247 Between 2009 and 2015 Julie and Mr Hartley continued to monitor the process as required. They attended the Council drop-in session in March 2009. Julie assisted Mr Hartley with his response to the Council's Core Strategy consultation in April 2009 and his representation to the Council on its Core Strategy draft proposals in February 2011. She liaised with Mr Hartley in relation to the 2010 SHLAA published in October 2011 and the response to the Core Strategy in the autumn of 2012. She had the 'angry call' with Andrew in January 2013 about potential housebuilders when, as I have found, he did not tell her to stop work on the project. In October 2013 she discussed with Mr Hartley whether it was necessary to make any further representations in response to the Planning Inspector's withdrawal of the Council's Core Strategy document. In December 2015 and January 2016, she liaised with Mr Hartley over the response that needed to be made before 1 February 2016 to the consultation on the draft Local Plan. In January 2018 she asked Mr Hartley to submit a hearing statement in support of the two allocated sites as part of the Inspector's Examination of the final draft version of the Local Plan.

248 Julie's work has been summarised in the activity log she prepared for the purposes of the trial. She has estimated that she spent a total of 717 hours on the project. I have discounted the 90 or so hours spent prior to 2008. Some of the times recorded from 2016 onwards (such as those relating to meeting with Mr Oates) appear to be concerned with this dispute as opposed to dealing with the project. However, and recognising that the remaining estimates are based principally on her memory of activities undertaken up to 14 years previously, I am prepared to accept that Julie spent between 500 and 600 hours in total working on the project between 2008 and 2018. That work was carried out for the benefit of Shirley, Andrew and Robert at Julie's expense.

(3) Was the enrichment unjust?

249 Shirley, Andrew and Robert obtained the benefit of Julie's services, at Julie's expense, in circumstances where they had notice of the services, they knew that Julie expected a reward for her services, and they could have rejected the benefit (but did not). They were enriched by Julie's services in circumstances which were unjust because they knew she was not providing those services gratuitously and they made no attempt to reward her for them. My reasons for this conclusion follow.

250 Andrew and Robert were well aware as a result of their receipt of Julie's 2004 letter, the extensive discussions that took place at the site meeting in June 2008 and Julie's emails to Andrew sent before and after that meeting what services Julie was going to provide for them, with Mr Hartley's assistance.

251 In late November 2008, Julie sent Andrew the detailed draft submission which she and Mr Hartley proposed to lodge with the Council in response to the Call for Sites and Andrew was aware this submission was lodged with the Council. There was then a gap of some four years when there was no direct communication between Julie and Andrew. However Andrew was aware (as were Shirley and Robert) from the discussions with Julie and Mr Hartley at the site meeting in June 2008 that development in projects such as these took many years to come to fruition. I find that during this time Julie spoke to Shirley at regular intervals and continued to update her on what she and Mr Hartley were doing. I also find that Shirley in turn passed on to Andrew (and probably Robert as well) the substance of what she was told by Julie.

252 It was at the start of 2013 when Julie called Andrew to update him on progress and suggest that it was time to approach housebuilders. This was the 'angry call' when Andrew told Julie he did not want her to be involved in any discussions with housebuilders but did not tell her to stop work. After this conversation, over the next three years, I find that Shirley, Andrew and Robert were aware that Julie was continuing to take steps with Mr Hartley to do whatever was necessary to have the Netherton Moor land included in the draft Local Plan. Julie told Shirley what they were doing and Shirley passed this on at least to Andrew and probably to Robert as well. All the siblings agreed that Shirley was the person through whom family news was communicated and there was no reason for Shirley not to pass on to her sons what she was told by Julie.

253 None of Shirley, Andrew or Robert told Julie about the approach they received from Persimmon in early 2014 nor did they tell her about the option agreement they signed with Persimmon in late 2014. Julie therefore carried on providing her services in conjunction with Mr Hartley oblivious of Persimmon's interest in the project.

254 Julie's letter to Andrew dated 21 December 2015 (copied to the rest of the family) refers to the recent inclusion of the Netherton Moor land in the draft

Local Plan, which she describes as a "massive breakthrough". I have already held that this was the result of work undertaken by Julie and Mr Hartley because Persimmon's documents lodged in September 2015 were received too late to influence the allocation of sites in the Local Plan. Julie told Andrew and the rest of the family in that letter that she and Mr Hartley proposed to draft a submission to the Council supporting the existing allocations in the draft Local Plan and arguing that certain land which had been excluded should be included. Andrew had the opportunity to tell Julie and Mr Hartley that he did not want them to do this work. It was also his opportunity to ask Julie at that stage why (on his case) she had ignored his instructions to her to stop work back in January 2013. He did neither of those things.

255 Julie's letter to Andrew dated 26 January 2016 summarises the work she and Mr Hartley had done to date and, under the heading "Next steps", gives details of what they proposed to do "in addition to any submissions made by the builder, Persimmon". Andrew chose not to respond to that letter. His explanation was that he had already told her to stop some three years earlier (an explanation I reject) and if Julie was foolish enough to instruct Mr Hartley to do further work, that was a matter for her.

256 I consider that Andrew's lack of response to the letters Julie sent to him at the end of 2015 and in early 2016 justified Julie in continuing to instruct Mr Hartley to make further submissions to the Council in connection with the draft Local Plan. The fact that Julie was by that time aware of Persimmon's involvement in the process does not affect the position. As Julie made clear in this January 2016 letter, she and Mr Hartley considered it necessary to make submissions on behalf of the family in addition to any submissions made by Persimmon.

257 Furthermore, despite Andrew and Robert's knowledge of Julie's meeting with Mr Oates in February 2016, they chose not to communicate with her. On 7 December 2016, Julie wrote to Mr Oates asking for "any information that could shed light on the situation". Mr Oates reported that he had received Julie's letter when he visited Shirley, Andrew and Robert two days later in connection with the declaration of trust. His attendance note records their "immediate view" that Julie's letter should be ignored but Andrew as having said "they would give it some thought" and let Mr Oates know "if there was anything to say at this stage". The upshot was that there was no further communication with Julie. In the meantime, Julie and Mr Hartley continued to work on the project, providing such further submissions to the Council as Mr Hartley advised were necessary in order to support the inclusion of the Netherton Moor land in the final version of the Local Plan.

258 In the circumstances, I conclude that Shirley, Andrew and Robert expressly asked Julie to help them extract the Netherton Moor land from the Green Belt so that it could be allocated for development. They knew that Julie expected a reward for her services. In cross examination, Andrew conceded as much when

he said "I am sure that [Julie] would hope to benefit somewhat". Even after Persimmon became involved, none of them took sufficient steps to stop Julie from continuing to work on the project. In the circumstances, Andrew and Robert have been enriched by Julie's services and such enrichment was unjust. The position of Shirley is less clear owing to the fact that since December 2016 she has not held any beneficial interest in the Netherton Moor land due to the declaration of trust which she signed in favour of Andrew and Robert. However, what is clear is that Andrew and Robert freely accepted Julie's services, and their enrichment was unjust.

(4) What is the value of the services Julie provided?

259 It is therefore necessary to determine the value of the services which Julie provided.

The significance of the services performed by Julie

260 I find that, had Julie not raised the possibility of removing the Green Belt restriction in relation to the Netherton Moor land in the discussion with her brothers at the funeral tea in March 2004 and then worked on the project from 2008 onwards, no one else in the family would have done so. Moreover, neither Andrew nor Robert nor anyone else in the family would have taken steps to engage specialist consultants to assist them in removing the Green Belt restriction. As a result, no developer or other third party would have come forward to express an interest in the development of the Netherton Moor land and the land would therefore remain undeveloped.

261 Julie's letter of 25 March 2004 addressed to her brothers and Shirley recommended that they undertake considerable homework and avail themselves of the very best advice regarding potential development of the farm. She made it clear they would need specialist help. She gave them the names of two land agencies whose specialist consultants dealt with farm development. She referred to the fact that Robert and Andrew had told her of an approach they had had from a developer in relation to the redundant buildings on the Fold Farm site and passed on to them the basic advice she had received from two land agents as to the possible routes to take in investigating whether development of the farm was a possibility. She offered to introduce them to farmers in different parts of the country, whom she named, who would be pleased to show them "what they are undertaking and how they have gone about it". She enclosed a recent article from one of the agents covering "some of the areas and the pitfalls to avoid in selling land for housing development".

262 Between receipt of Julie's letter in 2004 and the point at which Julie raised the question of development again with Shirley and Andrew in the first half of 2008, Andrew, Robert and Shirley took no steps to follow up on any of the advice and recommendations given to them by Julie in this letter. In particular, as Andrew

accepted in cross-examination, he and Robert took no steps to seek any specialist advice. In other words, despite the encouragement given to them by Julie at the funeral tea and in her follow-up letter, and their interest in what she had to say, they made no attempt to contact people who might be able to help them. I find that this was partly because they wanted to carry on farming as they had always done but principally because they did not have the ability (or, to use Andrew's word, the "nous") to engage the appropriate advisers in order to assist them in embarking on the project. Andrew responded to the approach he had received from Alcuin Homes in relation to the development of the redundant buildings at Fold Farm but securing the removal of a Green Belt restriction on agricultural land was an entirely different matter. No developer showed any interest in the Netherton Moor land and none of Andrew, Robert or Shirley took any steps to progress Julie's suggestions in this regard.

263 Both experts were agreed as to the difficulties facing any landowner who wishes to secure the release of land from the Green Belt. They agreed that such release can only be secured through a review of the local development plan and that the outcome of a request to release the Green Belt restriction is far from certain. There must first exist exceptional circumstances to justify a change to Green Belt boundaries and in this context all other potential non-Green Belt sites must have been considered. The planning authority must then consider the 'harm' to the Green Belt arising from the development of an individual site before deciding to allocate it. It is therefore vital that an individual site is properly represented, so as to make the case for its allocation.

264 Both experts were also agreed that the potential of securing planning permission to develop the Netherton Moor land for housing while in the Green Belt was virtually nil. They agreed it is vitally important to engage with the Council's process of preparing a development plan and that the earlier the engagement in the process, the greater the chances of success of Green Belt release and allocation for housing development.

265 It was Mr Creighton's view that Julie's actions in instructing Mr Hartley to promote the land through the Local Plan review and her and Mr Hartley's subsequent involvement in the Local Plan process resulted in the Netherton Moor land being released from the Green Belt and allocated for housing development that eventually resulted in planning permission for 250 dwellings. Mr Creighton considered that the critical step in the process was submitting the land in response to the Council's Call for Sites in 2008. Had Julie and Mr Hartley not done this, the Netherton Moor land would never have been assessed as suitable for housing in the SHLAA and considered by the Council for allocation in the development plan. His evidence (with which Mr Spawforth did not disagree) was that the Call for Sites submission (which I have found was

largely written by Julie) was detailed and comprehensive, making a good planning case for the land to be allocated as part of the Huddersfield Main Urban Area. Other sites were also proposed for development, but only the Netherton Moor land and one other site in the Netherton area (also actively promoted) were eventually allocated for development. It was the inclusion of the Netherton Moor land in the Call for Sites which resulted in the land being assessed by planning officers as suitable for development in its 2010 SHLAA (published October 2011) and 2014 SHLAA (published July 2015).

266 Mr Creighton considered that very significant weight should be given to the inclusion of the Netherton Moor land in the 2010 and 2014 SHLAAs and that the detailed information submitted by Julie and Mr Hartley in August and December 2008 was what resulted in the Council assessing the Netherton Moor land as being available, suitable and achievable for housing development. The information provided a well argued planning case to the Council and represented a key stage in the Council's decision to allocate the land in the draft Local Plan of 2015. Mr Creighton noted that the adopted Local Plan of 2019 allocated a total of 48 sites for housing and mixed use (including housing) development in the Huddersfield Main Urban Area. 10 of these 48 sites were Green Belt releases, all of which were first assessed by the Council in the 2010 SHLAA. The adopted Local Plan did not introduce any new Green Belt release sites that had not been first considered in the 2010 SHLAA. As Mr Creighton also pointed out, 85% of the 48 Huddersfield Main Urban Area allocations in the adopted Local Plan were first identified in the 2010 SHLAA, the remaining 15% being mainly Council owned, smaller brown field infill sites that were introduced later into the Local Plan process. He pointed to these facts as demonstrating the importance of engaging with the SHLAA process as early as possible. I accept Mr Creighton's evidence that, had the Netherton Moor land not been included and assessed favourably in the 2010 SHLAA, it is very unlikely the Council would have gone on to allocate the land in the Local Plan as it would have looked for alternative sites to meet its housing needs.

267 Mr Creighton's view was that the representations made by Julie, through Mr Hartley, to the Core Strategy between 2009 and 2012 were important in creating a positive planning context for new housing development in Netherton and in reassuring the Council that the Netherton Moor land was being actively promoted. Even though the Core Strategy was withdrawn in October 2013, the 2010 and 2014 SHLAAs were still used to inform the Local Plan. Julie and Mr Hartley's April 2009 representations to the LDF's Core Strategy options consultation agreed with the Council's assessment of Netherton as being part of the Huddersfield Main Urban Area in planning terms and supported the option of focusing new housing growth in Huddersfield. It was Mr Creighton's opinion (which I accept) that these representations resulted in the Council creating as early as 2009 a positive planning context for housing development and Green

Belt release in Netherton. Not all of the villages on the edge of Huddersfield were included as part of the urban area (for example Linthwaite) so it was not automatic that Netherton would have been identified as part of the urban area of Huddersfield.

268 Mr Creighton also noted that Julie and Mr Hartley's representations in February 2011, supporting elements of the LDF draft Core Strategy but also requesting that Netherton be specifically identified on the Local Plan as a location for up to 200 new homes and as an area suitable for Green Belt release, contributed further to a positive planning context for the eventual allocation of the land for housing development. Moreover, although the Core Strategy was subsequently found by the Planning Inspector to be unsound in its approach to calculating the scale of development needed in the borough, it was not found to be unsound in its approach to the distribution of development and the strategic approach to the location of new development in the draft Local Plan was very similar to that identified in the unadopted and withdrawn Core Strategy.

269 In Mr Creighton's opinion, it was Julie and Mr Hartley's work which resulted in the Netherton Moor land being removed from the Green Belt and allocated for housing in the Local Plan and had it not been promoted by them, it would have remained in the Green Belt, where its development potential for housing land would have remained at virtually nil.

270 I agree with Mr Creighton's view that Persimmon would never have been aware of the Netherton Moor land as a potential site had it not been promoted by Julie and Mr Hartley through the Call for Sites and subsequently assessed as suitable for housing in the SHLAA. I find that it was as a result of Persimmon's representative being on the Council's SHLAA strategy committee that Persimmon became aware of the possibility of developing the Netherton Moor land. I also find that the approach which Andrew received in early 2014 from Persimmon and any other approaches from housebuilders at about that time were the direct result of the work done by Julie and Mr Hartley in securing the inclusion of the Netherton Moor land in the SHLAA.

271 I have found that Persimmon did not make any submissions to the Council in relation to the inclusion of the Netherton Moor land in the draft Local Plan prior to September 2015 and I accept Mr Creighton's evidence that those submissions were too late to have made a material difference since by that time the Council had already decided which sites to allocate as suitable for housing in the draft Local Plan. The crucial period for the Council in deciding which sites to allocate in the 2015 draft Local Plan were the months of July, August and September 2015, as evidenced in the Sustainability Assessment Report published on 21

September 2015 which included a map showing the Netherton Moor land as two draft allocations and also the Cabinet Report of 6 October 2015 which approved the draft Local Plan consultation and included the land as two draft allocations. The publication of the Sustainability Assessment Report predated the receipt of Persimmon's promotional document dated 30 September 2015. Mr Creighton's evidence was that this report would have been prepared months ahead of its publication which confirms his view that the Council had decided to allocate the Netherton Moor land in the draft Local Plan before the summer of 2015. The Cabinet report, which included a draft version of the new Local Plan, would have been available to the public one week before the Cabinet meeting, 29 September 2015, so by the time the Council received Persimmon's promotional document on or after 30 September 2015, the Council had already decided to allocate the land in the draft Local Plan.

272 I agree with Mr Creighton that the submissions made by Julie and Mr Hartley to the Council from January 2016 onwards provided important support for the proposed allocations of the Netherton Moor land. As Mr Creighton noted, the allocations attracted 77 comments, 75 of which were in opposition. A local action group, the Netherton and Crosland Action Group, was formed to oppose the three housing allocations and submitted a petition of 1,624 signatures to the Council. His view, which I accept, was that it was vital the Netherton Moor land continued to be promoted at this stage of the Local Plan process in order to rebut the objections and reassure the Council that the landowner intended to develop the land.

273 Mr Creighton's view was that Mr Hartley's response to the Inspector's specific question regarding the Netherton Moor sites made on 25 January 2018 as to whether the sites were "justified, effective, developable/deliverable and consistent with national policy" played an important part in convincing the Inspector that this question should be answered in the affirmative. Persimmon's much more detailed submission to the Inspector is likely to have performed a more important role in this regard but the part played by Mr Hartley's submission cannot be ignored.

274 Mr Spawforth accepted that Julie "used good judgement in submitting a SHLAA representation at the earliest opportunity" and that "early consideration of the site can be very beneficial in a successful allocation of land, provided all the other tests of deliverability are also subsequently met". He was unable to conclude what would have happened if Julie and Mr Hartley had not made their SHLAA representation at the time they did. He said it was "possible, but not certain, that a later submission by another party at the start of the subsequent Local Plan preparation would have achieved the same ultimate outcome".

275 However, Mr Spawforth's view was that Julie and Mr Hartley only made a "limited contribution" to the release of the Green Belt restrictions over the Netherton Moor land and its allocation for residential housing. He suggested that it was the representations made by Persimmon in connection with the Local Plan from 2014 onwards which were the decisive factor in securing these outcomes. He indicated that Julie and Mr Hartley's work after Persimmon became involved might have caused confusion for the Council regarding the land's availability and whether its ownership or control was contested and considered this could have undermined Persimmon's work. He also considered it was not clear that the inclusion of the Netherton Moor land in the 2010 SHLAA resulted in Persimmon identifying the site and getting in touch with the landowners.

276 I prefer the evidence of Mr Creighton. I consider that Julie and Mr Hartley were responsible for the release of the Netherton Moor land from the Green Belt and its allocation for housing and that Persimmon made no or only a negligible contribution to that process.

277 Nor do I accept Mr Spawforth's suggestion that Julie and Mr Hartley's work after Persimmon became involved might have caused confusion for the Council regarding the availability of the Netherton Moor land and whether its ownership or control was contested. I prefer Mr Creighton's view that their submissions in relation to the Core Strategy and the draft Local Plan were appropriate and proportionate and ensured that the Council was aware the Netherton Moor sites remained available for inclusion in the Local Plan.

The value of Julie's services

278 Julie submits that her services should be valued objectively by identifying the price which a reasonable person in Andrew and Robert's position would have had to pay for those services. She says she played a role akin to that of a land promoter whose services would be remunerated by way of commission fixed by reference to the uplift in the value of the Netherton Moor land, the level of such commission taking into account the risk of an unsuccessful outcome. She relies on the reasoning in Way v Latilla where the claimant's remuneration was fixed after taking into account what would be a reasonable commission in the circumstances and fixing a sum accordingly.

279 Andrew and Robert deny that Julie played a role akin to that of a land promoter. They say that her role was limited to seeking to obtain the release of the Netherton Moor land from Green Belt and its successful allocation for residential development. She never contemplated or agreed to be responsible for seeking and obtaining planning permission which, so Andrew and Robert argue, involved

a considerable amount of additional work and expense on Persimmon's part. They say that Mr Hartley's fees of under £6,000 are the best indicator of the extent of work done by Julie and that, taking Julie's claim and evidence at its absolute highest by reference to her activity log, she spent 700 hours working on the project at an hourly rate of £125 which would result in an award in unjust enrichment of £87,500 plus what she paid to Mr Hartley and a small sum representing interest on those out-of-pocket expenses. They argue that such a result would be a "wildly inflated" award in the circumstances of this case because it would make no sense for Julie to be paid almost 15 times the amount charged at market rates by the expert planning consultant who, at best, she ably assisted. They say that the proper approach would be to limit Julie to the benefit transferred between the summer of 2008 and the 'angry call' in January 2013 which involved 44.5 hours of Mr Hartley's time for which he charged £100 per hour plus VAT. They say Julie should be deemed to have spent 46 hours during this period which leads to an award under her unjust enrichment claim of £4,600 plus the gross sum of Mr Hartley's fees of £5,941.52 plus interest.

280 The difficulty with Andrew and Robert's approach is that it ignores their own expert's evidence. Mr Spawforth agreed with Mr Creighton that, if Julie had provided all the services of an experienced land promoter, the fee would typically have been between 15% and 30% of the uplift in the value of the land plus costs incurred up to an agreed maximum value. He agreed that, whilst Julie did not have a contract agreeing to act as a land promoter and did not perform all the services that a land promoter would be expected to perform, she could properly be regarded as having partially completed the role of a land promoter. The role she performed was to bring the Netherton Moor land to the attention of the Council in 2008, and to bring the availability of the land to the attention of housebuilders through its identification in the 2010 and 2014 SHLAAs. That role continued when she (through Mr Hartley) made representations to the Core Strategy that identified Netherton as a suitable location for new housing and took steps to secure the inclusion of the Netherton Moor sites in the draft Local Plan between 2015 and 2018.

281 Although Julie was never formally appointed by Andrew and Robert as a land promoter under a contract, I find that she performed a role which was akin to that of a land promoter. By the time Persimmon came to make representations to the Council in September 2015, the services of a professional land promoter were not required as Persimmon had the necessary resources to make representations supporting the Netherton Moor sites' inclusion in the adopted Local Plan and then to apply for planning permission. Persimmon factored in the risk of not achieving these outcomes in the price they agreed to pay for taking up their option. I have found that it was the work of Julie and Mr Hartley which resulted in the release of the Netherton Moor land from the Green Belt and its allocation for housing development. As a consequence of that work, a substantial element

of risk involved in this development project was eliminated. This is work which a land promoter would have undertaken from inception of the project and a risk which a land promoter would have assumed. I find that Julie took the risk that the Netherton Moor land might not be released from the Green Belt and subsequently sold for residential development. She did not seek or expect to receive any reward for herself unless this outcome was achieved.

282 There is no doubt that Shirley, Andrew and Robert agreed and encouraged Julie to perform a role akin to that of a land promoter. The discussions which took place between them in 2008 regarding her remuneration for providing this service were (to use Lord Atkin's words in Way v Latilla) "on the footing of what may loosely be called a "participation", and nothing else". I find that each of Shirley, Andrew and Robert expected at that time that, should the Netherton Moor land be sold for residential development, Julie would be remunerated by receiving an unspecified share of the proceeds of sale. Andrew and Robert's acknowledgement of Julie's reference to all the siblings being "better off" as a result of her and Mr Hartley's work meant they accepted that at least Julie was entitled to receive an unspecified share of the anticipated windfall. They were content to proceed in this way because they recognised the difficulty involved in releasing the land from the Green Belt and they did not have the ability or inclination to remunerate Julie on any other basis. They were content to allow her to receive a commission type payment which would only be payable in the event of a successful outcome because they recognised the considerable risk assumed by Julie that no such payment would ever be made. Given the substantial uplift in the value of their land which would result from a successful outcome, they recognised that Julie's remuneration should be linked to the size of that uplift, reflecting the risk that the uplift might never be achieved.

283 In the circumstances it is appropriate for Julie to be paid for her services on a quantum merit basis calculated in the same way that a land promoter's fee would be calculated, in other words on a commission basis by reference to an objective valuation of the services she and Mr Hartley in fact performed. That is the price which a reasonable person in Andrew and Robert's position would have had to pay for those services. In light of my finding that Julie's role was akin to that of a land promoter and that, like a land promoter, she took the risk of not being remunerated, she is entitled to be rewarded on the basis of a fee set as a percentage of the sale proceeds received by Shirley, Andrew and Robert from Persimmon.

284 The experts are agreed that, had Julie provided all the services of a professional land promoter and achieved a successful outcome, her promotion fee would have been between 15% and 30% of the uplift in the value of the land plus costs incurred up to an agreed maximum value. In his report, Mr Spawforth suggested

that a typical fee would be in the range of 10% to 25% depending on the scale of the perceived risk, timescale of the promotion agreement and the commercial negotiations between the parties. However, no doubt in recognition of the difficulties involved in securing the release of the Netherton Moor land from the Green Belt, in the joint report Mr Spawforth was prepared to agree with Mr Creighton's range of 15% to 30%. Neither expert suggested that a land promoter would have been paid at an hourly rate for time spent on the project and I do not accept Andrew and Robert's submission that it is appropriate to value Julie's services on this basis. However, in view of the fact that Julie did not perform all the services of a land promoter, some of which were performed by Persimmon, I do not consider that her commission fee should be within the range of 15% to 30%. For the reasons I give below, I consider that Julie's services were worth a fee calculated as 7.5% of the uplift in value of the land.

285 Had Andrew and Robert not introduced Persimmon into the equation, it is entirely possible that Julie (with Mr Hartley's assistance) would have been involved in the selection of a suitable housebuilder and continued in her role until planning permission was obtained by or with the assistance of that housebuilder performing a similar role to that performed by Persimmon. However, that possibility forms no part of the assessment of value I undertake. I must decide the extent to which Andrew and Robert have been unjustly enriched as a result of benefiting from Julie's services without paying for them in circumstances where the option to acquire has now been exercised and the sale proceeds, including the entirety of the uplift in value of the land, have been (in the case of the first tranche) and presumably will be (in the case of the second tranche) retained by Andrew and Robert without paying Julie for the value of the services she provided.

286 In this context, what is principally relevant is the value of the services provided by Julie before Persimmon became involved. Whilst Julie and Mr Hartley continued to provide valuable services after Persimmon became involved, I consider the principal focus needs to be on the value of their services before that time because it can fairly be said that Persimmon undertook the lion's share of the work that remained to be done from September 2015 onwards (in particular in relation to the obtaining of planning permission).

287 I have already accepted Mr Creighton's evidence that the services which Julie carried out in promoting the Netherton Moor land from 2008 onwards were instrumental in securing its release from the Green Belt and its allocation for housing development in the draft Local Plan in 2015. Had it not been for Julie's services, Andrew and Robert would not have put the Netherton Moor land forward in the Council's Call for Sites and the possibility of developing such land would not have come to Persimmon's attention.

288 Mr Creighton's view was that the risks involved in securing the release of the Netherton Moor land from the Green Belt in 2008 were such that a land promoter would have sought to negotiate at the higher end of the commission range, i.e. towards 30%, in order to reflect the high planning risks of promoting a Green Belt site and the length of time it would take for the Council to adopt a new Local Plan that would release the land from the Green Belt and allocate it in the new Local Plan. He says his view of the difficulty of the task confronting a land promoter is confirmed by the fact that it took 11 years from 2008 to 2019 for the new Local Plan to be approved and adopted in order to enable an application for planning permission to be made. Julie also relies on Mr Parkin's evidence that of the six sites Persimmon were interested in, four were in the Green Belt and only one, namely the Netherton Moor land, was taken out of Green Belt and allocated for residential development. She says this evidence confirms the difficulty of the task.

289 Mr Spawforth was not prepared to accept that Julie and Mr Hartley's services were responsible for the Netherton Moor land being included in the draft Local Plan. He suggested that the Council would have taken a calculated gamble – what he described as "a leap of faith" – in deciding that the Netherton Moor sites were achievable, and would have proceeded on the basis that they could be removed from the Local Plan if the evidence of achievability was not forthcoming by the time of the Inspector's Examination. Mr Spawforth's view was that Julie's initial work should be recognised as having increased the 'Hope Value' of the land when the Council confirmed its development potential in the 2010 SHLAA. In his opinion the SHLAA process was a low cost and low risk part of the Local Plan process which may represent only about 0.5% to 2% of the total cost and risks of promoting a site. He therefore concluded that the value of the cost and risk taken by Julie associated with the SHLAA representation was between 0.5% and 2% of what he said was the 10% to 25% fee normally payable plus costs. This produced what Mr Spawforth considered to be an equivalent land promoter's fee range for the work undertaken by Julie of between 0.05% (i.e. 0.5% x 10%) and 0.5% (i.e. 2% x 25%) plus costs.

290 I found Mr Spawforth's approach and analysis hard to follow. An obvious problem with it is that he has only sought to value Julie's contribution at the initial SHLAA stage whereas I have found (agreeing with Mr Creighton) that she was responsible for the next and most important stage which was securing the removal of the Netherton Moor land from the Green Belt and its allocation for housing in the draft Local Plan.

291 I accept Mr Creighton's evidence that Julie's work in this regard had considerable value and resulted in a substantial reduction in the planning risk because it meant that the Council had (to use Mr Creighton's words) "nailed their colours to the mast" and were on the landowner's side. His view was that getting to the draft Local Plan stage meant that the landowner was "more than halfway there" and that this made the land considerably more attractive to a housebuilder.

292 Mr Spawforth agreed that in 2008 there was not much appetite for Green Belt release and the risk of pursuing an application which involved releasing land from the Green Belt was high. In his opinion, the prospect of achieving such a release was only about 20% in 2008. In cross examination, he was reluctant to comment on the value to be attributed to Julie's services because he said there was no way of assessing the value of those services mid-way through the land promotion process.

293 The experts were agreed that, following the grant of planning permission, a land promoter would have received a fee of between 15% and 30% of the uplift in value. I accept Mr Creighton's evidence that such uplift in value was £8.7 million, being the difference between £300,000 which was the agricultural value of the land (assessed by reference to the average price achieved on sales of agricultural land in the vicinity between 2016 and 2019) and the price paid by Persimmon under the option agreement of £9 million. This would have resulted in a land promoter being paid between £1.3m and £2.6m. Mr Creighton says that this gives an indication of the monetary value of the services provided by Julie and Mr Hartley. He accepted that it would be appropriate to apply a discount to the fee to be awarded to reflect the fact that Julie did not provide all the services typically associated with a land promoter but would not be drawn on the size of the discount that the court should apply.

294 I consider that the objective market value of the benefit of the services provided by Julie to Shirley, Andrew and Robert is fairly represented by a fee of 7.5% of the uplift in value of the land which was achieved on the grant of planning permission. I have reached this conclusion for the following reasons.

295 First, it was thanks to Julie's services that the Netherton Moor land was included in the 2010 SHLAA and therefore came to the attention of Persimmon and other housebuilders. Had Julie not performed the services at the time she did, I have found that this land would never have come to Persimmon's attention and would not have been sold to Persimmon for development. Julie's work in making detailed submissions in response to the Council's Call for Sites was key to this process.

296 Second, Julie's services were responsible for securing the release of the Netherton Moor land from the Green Belt and its inclusion in the draft Local Plan. Mr Creighton's opinion (which I accept) was that this had the effect of reducing the risk associated with the development by at least 50%. This is the significant benefit which Julie's services provided to Shirley, Andrew and Robert which enabled them to secure Persimmon as the developer and then rely on Persimmon's expertise (and financial backing) in supporting the adoption of the Local Plan and obtaining the grant of planning permission.

297 Third, it is necessary to have regard to the fact that, whilst Julie was performing a role akin to that of a land promoter, she was not in fact a professional land promoter appointed under a contract nor did she play any role in the later stages of the planning process which resulted in the grant of planning permission. Although Mr Creighton considered that a land promoter might have negotiated a commission fee towards the higher end of the normally applicable range, I do not consider that is the appropriate starting place in assessing the market value of Julie's services. I have arrived at a fee of 7.5% as representing the market value of the services performed by Julie by taking the figure at the lower end of the range, namely 15%, and halving that figure, to reflect the fact that (1) Julie did not have any such formal arrangement and (2) the value of Persimmon's services was broadly equivalent to the value of the services provided by Julie. This conclusion is supported by the risk evaluation. Julie's services had the effect of eliminating 50% of the risk (accepting as I do Mr Creighton's evidence in that regard). Persimmon's services were responsible for eliminating the remaining risk.

298 Fourth, I have used the option agreement which Shirley, Andrew and Robert entered into with Persimmon at the end of 2014 as a means of testing the value of the services Julie provided. That agreement provided for a 10% discount (i.e. £1 million) on what Persimmon perceived to be the market value of the land of £10 million. That £1 million figure appears to represent a profit for Persimmon which takes into account the risk of not obtaining planning permission for residential development which Persimmon perceived to continue to exist at the end of 2014. I do not accept Julie's argument that Persimmon's risk was less than hers because they had the benefit of an option agreement. Persimmon were committing themselves to incurring substantial costs which would not be recouped if no planning permission was ultimately granted. However, the fact that Persimmon did not seek to apply a higher discount than 10% is an indication of the value of the services Julie had already performed and the resulting reduction in the risk to Persimmon of planning permission not being granted.

299 Accordingly I conclude that the objective market value of the benefit of the services provided by Julie to Andrew and Robert should be assessed by reference to a commission fee of 7.5% of £8.7 million (being the amount of the uplift in the market value of the land from £300,000 to £9 million). On that basis, she is entitled to be paid £652,500 by Andrew and Robert.

300 Whilst a land promotion contract would probably have enabled a land promoter to recover his costs up to an agreed maximum, I do not consider it appropriate to order Andrew and Robert to reimburse Julie for the amount of Mr Hartley's invoices. As I have found, there was no agreement between them that Andrew and Robert would be responsible for these invoices. The services provided by Mr Hartley were part of the services provided by Julie for which she is being paid by the unjust enrichment award I have made in her favour.

Conclusion

301 For the reasons given, I dismiss Julie's proprietary estoppel claim and allow her claim in unjust enrichment, assessing the value of the services she provided as being £652,500. I invite the parties to seek to agree an order and in default of agreement to let the court know whether they wish consequential matters to be dealt with in written submissions or at a hearing.