Neutral Citation Number: **[2026] EWHC 1530 (TCC)**

Case No: HT-2025-000928

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23rd June 2026

Before :

JONATHAN ACTON DAVIS KC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

OAKLAND WANTAGE CARE HOME LIMITED	**Claimant**
- and -	
STEPNELL LIMITED	**Defendant**

- -
- -

Brenna Conroy (instructed by **Brodies LLP**) for the **Claimant**
Peter Land (instructed by **Veale Wasbrough Vizards LLP**) for the **Defendant**

Hearing date: 9 June 2026

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JUDGMENT

Jonathan Acton Davis KC:

1. By a contract dated 9 August 2019 the Claimant (as the Employer) engaged the Defendant (as the Contractor) to carry out the design and construction of a 65 Bed Care Home including all associated demolition, drainage, services, internal and external works" ("the Works") at Grove Road, Wantage, OX12 7BZ.

2. The Parties contracted on the basis of a JCT Design and Build Contract (2016 edition) with bespoke amendments described as the "Special Conditions" ("the Contract"). At Article 4 of the Contract, the Employer's agent was named as Oakland Primecare Limited who was replaced by Aedifice Partnership ("the EA") on 29 October 2019.

3. The Works were certified as practically complete on 26 April 2021. That triggered a 12 month rectification period. In January and February 2022, there were negotiations by way of meetings and exchange of emails during the course of which the Contractor's final account was discussed.

4. By email dated 17 February 2022, the Contractor sent the EA an email, attached to which was a document dated 15 February 2022 ("the February 2022 Statement"), the status and meaning of which is the subject of this Part 8 Claim.

5. By email dated 7 March 2022, the EA responded to Interim Valuation 36 (which was issued on 28 February 2022) with a payment certification, and issued its response to the February 2022 Statement, disputing Stepnell's entitlement to the sums claimed ("March 2022 Response"). The March 2022 Response concluded:

> *"Further to the Stepnell final account projection submitted on 21st February 2022 under the heading (Valuation 35A), ("Valuation 36") submitted 28th February 2022 and in consideration of the points within this letter we find the final account figure to be £7,988,593.74 ex VAT."*

6. There then appears to have been a hiatus until, on 9 February 2024, the Contractor sent the EA a further document ("the February 2024 Statement"). That document is also for consideration in this Part 8 Claim.

7. On 25 March 2024, the Contractor referred a dispute to adjudication, seeking payment of the sum set out in the February 2024 Statement as a sum due in the absence of a Final Payment Notice or Payless Notice, or alternatively payment on a "true value" basis.

8. In that adjudication, it was decided that the relevant statement for the purposes of clause 4.24.6 of the Contract was the February 2024 Statement and that there was No Final Payment Notice or Payless Notice issued in response so that the sum set out in that statement was due and owing to the Contractor as at 23 March 2024.

9. On 29 May 2024, the Employer paid the Contractor the sums due pursuant to that adjudication.

10. By a claim form issued under CPR Part 8 on 10 September 2025, the Contractor seeks declarations that:

    (i) the "relevant statement" for the purposes of clause 4.24 of the Contract was the February 2022 Statement and that notice was given on 7 March 2022 disputing the sum due;

    (ii) alternatively, if the "relevant statement" for the purposes of clause 4.24 of the Contract was the February 2024 Statement as the Employer contends, the Contractor gave notice disputing the sums set out in that statement in the March 2022 Response and/or the September 2022 Statement and/or the Final Payment Notice and/or as recorded in the February 2024 Statement itself;

    (iii) as a consequence, the "relevant statement" was not conclusive as to the sum due under clause 4.24.2;

    (iv) the Employer is therefore entitled to adjudicate or issue proceedings in relation to the true value of the Contractor's final accounts.

11. Oakland relies upon the witness statement of Mr O'Carroll dated 10 September 2025 and the Exhibits thereto. Stepnell relies upon the witness statement of Mr Spiers dated 9 October 2025 and of Mr Morgan dated 9 October 2025 and the Exhibits to those statements.

12. It is not suggested that this dispute is unfit for Part 8 of the CPR.

13. Clause 4.24 of the Contract provides:

> *"4.24.1 Following Practical Completion of the Works the Contractor shall submit the Final Statement to the Employer and supply him with such supporting documents as he may reasonably require.*
>
> *4.24.2 The Final Statement shall set out the adjustments to the Contract Sum to be made in accordance with clause 4.24 and shall state:*
>
> *4.24.2.1 the Contract Sum, as so adjusted; and*
>
> *4.24.2.2 the sum of amounts already paid by the Employer to the Contractor*
>
> *and the final payment shall be the difference if (if any) between the two sums, which shall be shown as a balance due to the Contractor from the Employer or to the Employer from the Contractor as the case may be. The Final Statement shall state the basis on which that amount has been calculated including details of all such adjustments.*
>
> *4.24.3 If the Contractor does not submit the Final Statement within three months of Practical Completion of the Works, the Employer may on or after the expiry of that period give the Contractor notice that unless that statement is submitted within two months from the date of the notice, the Employer may himself issue a Final Statement in lieu of that from the Contractor.*

4.24.4 Unless the Contractor submits the Final Statement prior to the Employer exercising that right, the Employer may at any time after the two month notice period issue a Final Statement to the Contractor ("the Employer's Final Statement") in the form and with the details required by clause 4.24.2 so far as the Employer, on the information in his possession, is reasonably able to do so.

4.24.5 The due date for the final payment shall be the date one month after whichever of the following occurs last:

4.24.5.1 the end of the rectification period in respect of the Works or (where there are Sections) the last such period to expire;

4.24.5.2 the date stated in the notice of Completion of Making Good under clause 2.36 or (where there are Sections) in the last such notice to be issued; or

4.24.5.3 the date of submission to the other Party of the Final Statement or, if issued first, the Employer's Final Statement ("the relevant statement").

4.24.6 Except to the extent prior to the due date for the final payment the Employer gives notice to the Contractor disputing anything in the Final Statement or the Contractor gives notice to the Employer disputing anything in the Employer's Final Statement, and subject to clause 1.8.2 the relevant statement shall upon the due date become conclusive as to the sum due under clause 4.24.2 and have the further effects statement in clause 1.8."

14. The contractual provisions relating to the "*effect of the Final Statement*" are set out at clause 1.8 of the Contract. Those provisions are:

"1.8 Effect of Final Statement

1.8.1 As from the due date for the final payment specified in clause 4.24.5 and in addition to the effects referred to in clause 24.6 the Final Statement or, as the case may be, the Employer's Final Statement ("the relevant statement") shall, except as provided in clause 1.82 and 4.24.6 (and save in respect of 4) have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:

1.8.1.1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Employer's Requirements, or in any instruction issued by the Employer under these Conditions to be for his approval, the particular quality or standard was to his reasonable

satisfaction, but the relevant statement shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;

1.8.1.2 all and only such extensions of time, if any, as are due under clause 2.25 have been given; and

1.8.1.3 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.

1.8.2 The effects of the relevant statement specified in clause 1.8.1 and 4.24.6 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in any settlement of those proceedings.

1.8.2.1 where those proceedings are commenced before or within 28 days after the date of the issue of the relevant statement; or

1.8.2.2 in the case of an adjudication commenced within the period referred to in clause 1.8.2.1 in which the Adjudicator gives his decision after the date of issue of the relevant statement, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision but not otherwise.

1.8.3 For the purposes of clause 1.8.2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the relevant statement neither Party takes a further step in them."

15. Oakland denies that the relevant statement for the purposes of clause 4.24 is the February 2024 Statement, as decided in the Adjudication.

16. Oakland contends that the relevant statement was the February 2022 Statement served by the Contractor, and that in relation to that statement:

(i) notice disputing the sums claimed was given by way of the March 2022 Response, alternatively, the September 2022 Statement.

(ii) accordingly, notice of a dispute was given prior to the Due Date of 20 October 2022, being one month after the Notice of Completion of Making Good on 20

September 2022 (the latest of the three events in clause 4.24.5), and

(iii) as a consequence, the conclusivity provision at clause 4.24.6 does not apply.

17. Alternatively, if the relevant statement was the February 2024 Statement (contrary to Oakland's primary position), Oakland contends that it gave sufficient notice disputing the sums for the purposes of clause 4.24.6 in the prior communications between the Parties and/or as evidenced on the face of the document itself.

18. Ms Conroy identifies the issues as being:

(i) what document constitutes the relevant statement for the purposes of clause 4.24 ("Issue 1"); and

(ii) whether the relevant statement became conclusive as to the sum due under clause 4.24.2 and had the further effects stated in clause 1.8 ("Issue 2").

19. Mr Land's formulation of the issues is more fact specific, but amounts to the same:

(i) Was the 17 February 2022 document Stepnell's Final Statement?

(ii) In the context of the clause 4.24 final account conclusivity regime, is it possible to "*dispute anything in the Final Statement*" by way of project correspondence before that statement has been issued?

Issue 1

20. The task is to consider the documents of February 2022 and February 2024, governed by the applicable legal principles.

21. There is no dispute about the relevant legal principles: both Parties cited and relied upon the dicta of Joanna Smith J. in *Advance JV v Enisca Limited* [2022] EWCA 1152 (TCC):

> *"47. In summary, the approach to be taken by the court as gleaned from these authorities is as follows:*
>
> *i) In considering the true construction of a contractual notice (including notices under the payment regime in the Act – see Grove Developments per Coulson J at [21]-[22] and S&T in the Court of Appeal at [58] per Sir Rupert Jackson), the question is not how its recipient in fact understood it. Instead "the construction of the notices must be approached objectively. The issue is how a reasonable recipient would have understood the notices", i.e. a reasonable recipient "circumstanced as the actual parties were" (see Mannai at 767 G-H and 768B-C per Lord Steyn).*
>
> *ii) The notice must be construed taking into account the "relevant objective contextual scene", i.e. the court must consider "what meanings the language read against the contextual scene will let in" (see Mannai at 767H and 768A-B). This means that, amongst*

other things, the reasonable recipient will be credited with knowledge of the relevant contract (see Mannai at 768B-C).

iii) The purpose of the notice will be relevant to its construction and validity (Mannai at 768E).

iv) The court will be "unimpressed by nice points of textual analysis or arguments which seek to condemn the notice on an artificial or contrived basis" (Thomas Vale per HHJ Kirkham at [43]; Grove at [26]). Instead, as Sir Peter Coulson says in paragraph 3.36 of his book on Construction Adjudication (4th ed. 2018), focusing specifically on Pay Less Notices:

"The courts will take a commonsense, practical view of the contents of a payless notice and will not adopt an unnecessarily restrictive interpretation of such a notice…It is thought that, provided that the notice makes tolerably clear what is being held and why, the court will not strive to intervene or endeavour to find reasons that would render such a notice invalid or ineffective".

v) There is no principled reason for adopting a different approach to construction in respect of different kinds of payment notices ...

However:

"the particularly adverse consequences for an employer that follow from, say, a contractor's unanswered application/payment notice are relevant to the test of the reasonable recipient".

vi) To qualify as a valid notice, any payment notice must comply with the statutory (and, if more restrictive, the contractual) requirements in substance and form (Henia per Akenhead J at [17]). Payment notices and Pay Less Notices must clearly set out the sum which is due and/or to be deducted and the basis on which the sum is calculated. Beyond that, the question of whether a notice is or is not a valid notice is "a question of fact and degree" (Grove at [29] and S&T at [53]).

vii) Over and above the question of whether a notice has achieved the required degree of specificity, will be the additional question of whether the document that is alleged to constitute a valid notice was in fact intended to be such and whether it is "free from ambiguity" (Henia at [17] and Grove at [42]). The sender's intention is a matter to be assessed objectively taking into account the context. (Jawaby at [43], [59] and [63]).

viii) Although in Grove, Coulson J observed that payment notices must make plain what they are, there is no requirement for a particular type of notice, such as a Pay Less Notice, to have that title or to make specific reference to the contractual clause in order to be valid:

> *"[t]he question is whether, viewed objectively, it had the requisite intention to fulfil that function" (Surrey & Sussex at [65]).*
>
> *ix) One way of testing the validity or otherwise of a Pay Less Notice will be to see whether it "provided an adequate agenda for an adjudication as to the true value of the Works…" (Henia at [32] and Grove at [26]).*"

22. Ms Conroy argues that the test of interpretation of the February 2022 Statement is how that document would have been understood in the particular circumstances by a reasonable recipient aware of the surrounding facts. Mr Land does not challenge that summary although he adds a rider with which I deal below.

23. As to the surrounding facts, Ms Conroy relies upon the following:

    (i) It is not disputed that Stepnell and the EA were in the process of having discussions regarding the final account. These had started in July 2021, around three months after Practical Completion, which aligned with the period of grace given to the Contractor to submit its Final Statement under clause 4.24 of the Contract.

    (ii) There was a meeting to discuss the final account on 26 January 2022. That meeting formed the backdrop to the emails that followed, culminating in the submission of the February 2022 Statement.

    (iii) The February 2022 emails that pre-dated the submission of the February 2022 Statement:

        (a) continued to refer to discussions of Stepnell's final account;

        (b) included an intimation by Stepnell that it had further claims to add to its final account;

        (c) included a comment from the EA that Stepnell had already had "*nine months*" to "*prepare this*" which was clearly a reference to Practical Completion having been certified in April of the previous year; and

        (d) contained an email request from the EA for Stepnell to provide further evidence which "*either exists or does not*" given the time that had elapsed since the final account discussions the previous July.

    (iv) The February 2022 Statement was sent directly in response to the EA's email request for the further evidence in relation to Stepnell's final account.

24. Ms Conroy also relies upon Stepnell's email of 17 February 2022 attached the February 2022 Statement. That email specifically referred to:

    (i) the attached letter as "*the final account*" and the "*key supporting information demonstrating the changes*";

    (ii) the "*revised final account total circ £8,547m*";

    (iii) Stepnell's "*intention to settle the final account*";

    (iv) an apology "*for the lateness of this submission*"; and

(v) the offer a meeting to "*discus our submission*".

25. Ms Conroy also relies on the fact that the February 2022 Statement:

(i) refers to the "*Wantage Extra Care Home – Final Account*";

(ii) refers to the "*ongoing discussion*" and "*a bid to settle the final account*"; and

(iii) provided a valuation "Rev 35A draft FA" dated 16 February 2022 which set out the sums due and the basis on which it was calculated, amounting to £8,547,434.96.

26. Ms Conroy says that it cannot be seriously disputed that the February 2022 Statement complied with the relevant provisions of the Contract:

(i) Stepnell had a contractual right to submit a Final Statement after Practical Completion pursuant to clause 4.24.1. Practical Completion had been certified in April 2021, some 10 months before the submission;

(ii) there was no requirement for the Final Statement to be labelled the "*Final Statement*";

(iii) pursuant to clause 4.24.4, the document was required to set out the sum due and the basis on which it was calculated. "Rev 35A draft FA" complied with that requirement.

27. Therefore, says Ms Conroy, read against the "contextual scene" (*Mannai* at 767H and 768A-B), those documents could only be understood by a reasonable recipient as Stepnell's formal submission of the Final Statement. There were no other "final account" provisions in the Contract. The clear purpose of the notice was to conclude the final account, as Stepnell explained in the covering letter. That purpose is also relevant to the construction of its submission in February 2022.

28. Then Ms Conroy says that it was evident from the March 2022 Response that the EA treated the submission as requiring a formal response, disputing the sums claimed. The March 2022 Response stated:

> *"(i) At paragraph 1A "Introduction" that: "This report is written in response to various claims made by Stepnell Limited within documents titled "Wantage Care Home Val 35 Rev A 16 February 2022 with updated final account projection" (provided 17 February 2022)"*
>
> *(ii) At paragraph 8, "Conclusion" that "Further to the Stepnell final account projection submitted on 21 February 2022 under the heading of Valuation 35.A .. we find the final account figure to be £7,988,593.74 ex VAT."*

29. Mr Land argues that a reasonable recipient in the position of Oakland/Aedifice would not have considered the February 2022 Statement to be Stepnell's Final Statement. He argues that to be clear from the following features of that document:

> *"(i) It was in the form of previous interim applications;*

(ii) It was expressly headed "draft FA" demonstrating that it was a draft and not a finalised statement of final account;

(iii) The column setting out the breakdown was headed "Forecast of the FA", also demonstrating (in the context of the final account) the draft/forecast nature of the figure presented;

(iv) Various items in the build-up of "others" below item 61 were stated as being provisional or subject to further review or assessment by Stepnell:

(a) the amount for "out of sequence planting and maintenance" is "TBA";

(b) "change to elevations" is described as "budget" that is referenced in item 2 of the covering email of 17 February 2022 stating "Budget figure of 150k for the changes to the elevations and the roof plans (we will be submitting details of the remeasures and increase in Valu [sic] in the next week or so". In the supporting narrative the final paragraph states that the assessment of the effect of these changes was still being assessed and only a "budget figure of £150k" was provided;

(c) "Subcontract prolongation of £25,000" is described as "budget – to be ratified";

(d) "Client having access to the building for four weeks" of £50,000.00 is in the margin noted as requiring "further and better particulars will be produced with our final account"; and

(e) "Client issued PC for their benefit" of £50,000.00 is in the margin noted as requiring "further and better particulars will be produced with our final account"."

30. Mr Land therefore concludes that it would have been clear to a reasonable recipient that the documentation sent by Stepnell was not its Final Statement, because it was expressly and clearly stated:

(i) that the document as a whole was a draft/forecast;

(ii) that identified figures at that stage were draft/budget/estimate; and

(iii) that Stepnell's final account with updated/finalised figures and further particulars was still to come.

31. Although accepting that the test was as described by Joanna Smith J in *Advance JV v Enisca Limited*, Mr Land endeavoured to persuade me that the Court's reading of the February 2022 Statement should be tested against the subjective understanding of the Parties as appears from contemporaneous correspondence in February and March 2022. I reject that submission. It is inconsistent with the well-known test summarised by Joanna Smith J. set out above.

32. Mr Land also argued that the decision of the Adjudicator whom he described as an "*experienced quantity surveyor*" is a useful touchstone as to how a document might be understood by the objective reasonable recipient in the position of the EA. Again, I disagree. To follow that course would be to dilute the test summarised by Joanna Smith J. An Adjudicator, however experienced, is not necessarily the objective reasonable recipient.

33. This Judgment does not set out the details of what are described in Ms Conroy's helpful skeleton argument at Section C2 as the Final Account negotiation. Nor does it descend to the details of the emails referred to at paragraphs 18-26 of her skeleton argument. I have considered all that material carefully, together with the relevant documents at paragraphs 36-38 of her skeleton, which are set out at paragraphs 22-25 above.

34. It may well be that Stepnell intended to send, and perhaps even believed, that the February 2022 Statement was the Final Statement under clause 4.24 of the Contract. However, for the reasons given by Mr Land, which I have set out at paragraph 30 above, it is not plain to me that a reasonable recipient would regard the February 2022 Statement as Stepnell's Final Statement. In particular, the document itself is headed "Draft" and contains forecast information. It included figures which, at that stage, were draft/budget/estimate, and promised further information. In view of those factors, it seems to me that a reasonable recipient in the contextual scenery/framework would not regard the February 2022 Statement as being Stepnell's Final Statement for the purposes of clause 4.24 of the Contract.

35. That being my conclusion, I do not need to consider whether notice of a dispute was given timeously.

36. It further follows that the February 2024 Statement was the relevant statement under clause 4.24 of the Contract.

Issue 2: Conclusivity

37. Ms Conroy argued that if the February 2024 Statement was the relevant statement under clause 4.24, the Court should declare that the February 2024 Statement was not conclusive as to the matters set out at clause 4.24.6 and clause 1.8 of the Contract on the basis that there were sums set out in the February 2024 Statement that were disputed prior to the due date.

38. Ms Conroy reminds me of the need to give the words of a commercial contract their natural meaning against the background of the relevant surrounding circumstances as summarised by Lord Hamblen in *Sara & Hussein Holdings Limited v Blacks Outdoor Retail Limited* [2023] UKSC 2 at [29].

39. In *Brighton University v Dovehouse Interiors Ltd* [2014] EWHC 490 (TCC), Carr J, as she then was, provided useful guidance on conclusivity clauses at [26]:

> *" "Conclusive evidence" clauses have a clear commercial purpose. They are intended to provide contractually agreed limits to the scope of disputes and to provide clarity as the parties' obligations once a project is complete. They allow the parties to dictate if and to what extent a final certificate is and is not to be treated as conclusive between them."*

40. In *Trustees of the Marc Gilbard 2009 Settlement Trust v OD Developments and Projects* [2015] EWHC 70 (TCC), Coulson J. (as he then was) stated at [1]:

> *"Anyone familiar with the myriad JCT forms of contract will know that one of the things they all have in common is the intention to ensure that, after the works have been completed, any outstanding disputes between the parties can be swiftly and finally resolved."*

41. Ms Conroy placed particular reliance on *Battersea Project Phase 2 Development v QFS Scaffolding Limited* [2024] EWHC 591 (TCC), where the Court had to decide a different issue in relation to the operation of clause 1.8, mainly whether it could be said that an adjudication that becomes a nullity has reached a conclusion for the purposes of clause 1.8.2 of the Contract. At paragraph [66], the Court referred to the importance placed by the contracting parties upon the content of the underlying disputes.

42. At [75], it said:

> *"Standing back, I consider this outcome strikes the right balance between, on the one hand, recognising the benefits of a conclusive evidence provision (see Mark Gilbard at [9]) and, on the other hand, allowing a true value of the works to be undertaken and paid for on the other. BPS had known that the Final Sub-Contract Sum was in dispute even before the Final Payment Notice was issued. In accordance with clause 1.8.2, QFS had challenged the Final Payment Notice within time. From that moment, BPS will have understood that it could not, by that short cut, obviate the need for the parties to investigate the true value of the account. That exercise was duly undertaken by the adjudicator."*

43. Ms Conroy argues that upon a true construction of clause 4.24.6 of the Contract, Oakland's position is that it was required to:

(i) "*give notice*" to Stepnell;

(ii) disputing "*anything in*" the Final Statement; and

(iii) such notice had to be given before the "*due date for the final payment*".

44. Oakland argues that so long there is notice "*disputing anything*" in the statement prior to the Due Date, the conclusivity provision will not take effect. Clause 4.24.6 does not expressly preclude prior notice being given, nor does it require Oakland to give notice that the Final Statement itself is disputed. To the contrary, the wording of the clause shows the importance placed by the Contracting Parties upon the content of the underlying dispute.

45. It is argued that Oakland's construction of clause 4.24.6 is also consistent with the operation of clause 1.8.2.1 of the Contract which provides that the effects of clause 4.24.6 are suspended if proceedings were commenced in relation to the subject matter of the relevant statement before, or within 28 days after the issue of the relevant statement. That provision does not require the relevant statement itself be disputed in

an adjudication, but that there is a dispute about an item which thereafter is included in the relevant statement. Further, the fact that an adjudication commenced before a relevant statement is instituted is capable of satisfying the test for "*disputing anything in*" the relevant statement under clause 4.24.6 is consistent with Oakland's position that a Party must be on notice of the content of the underlying dispute before the Due Date, such that prior notice is sufficient. It need not issue a further notice following the receipt of the Final Statement.

46. It is plain, says Ms Conroy, that Stepnell was clearly on notice of the matters in the Relevant Statement being disputed as demonstrated by:

(i) the discussions between the Parties in 2022, including the March 2022 Response and the September 2022 Statement, both of which constitute sufficient notice; and

(ii) the contents of the February 2024 Statement itself which particularise the areas of dispute between the Parties.

47. That conclusion strikes the "right balance" to borrow the Judge's words in *Battersea Project* of recognising the benefits of a conclusive evidence provision and allowing a true of the works to be undertaken.

48. In my view, it is helpful to look back at clause 4.24.6. That clause provides:

> *"Except to the extent that prior to the Due Date for the Final Payment the Employer gives notice to the Contractor disputing anything in the Final Statement or the Contractor gives notice to the Employer disputing anything in the Employer's Final Statement and subject to clause 1.8.2 the relevant statement shall upon the Due Date become conclusive …"*

49. Thus, to avoid conclusivity, an Employer is required to give notice disputing anything "in" the Final Statement (the same preposition is referred to in relation to the Contractor's notice).

50. Notice of dispute is thereby required in relation to anything in the Final Statement. It must be a pre-condition to that notice that the Final Statement shall first have been given. It follows that correspondence prior to the issue of a Final Statement is not notice for the purposes of clause 4.24.6.

51. Oakland, therefore, also fails on Issue 2.

52. The Court is unable, in the light of those findings and conclusion, to grant the relief sought by the Claimant. Although in his skeleton argument, Mr Land also sought declarations, in argument he conceded that absent a pleading or an application notice, there is no jurisdiction in the Court to make the declarations he wishes.

53. I invite the Parties to draw up an Order which reflects the findings in this Judgment. I hope that the Parties will be able to agree costs. If not, any further issues or applications can be resolved through an additional hearing, or on paper, as the Parties prefer.