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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
[2018] EWHC 4072 (QB)



No. HQ12X04578

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 26 January 2018

Before:

HER HONOUR JUDGE WALDEN-SMITH

(Sitting as a Judge of the High Court)

B E T W E E N :

(1) ZULFIQAR ALI
(2) IBRAHIM AHMED SHAIK
(3) SOLAD SAKANDAR MOHAMMED

Applicants

- and -

LONDON BOROUGH OF NEWHAM

Respondent

MR M. RAHMAN (Advocate) appeared on behalf of the Applicants.

MR D. EDWARDS QC (instructed by Legal Services, London Borough of Newham) appeared on behalf of the Respondent.

J U D G M E N T

(Please note this transcript has been prepared from poor quality recording)

JUDGE WALDEN-SMITH:

INTRODUCTION

- 1 By an application dated 9 August 2017, Zulfiqar Ali, Ibrahim Ahmed Shaik and Solad Sakandar Mohammed (“the Trustees”) have sought a suspension of the injunction imposed upon them by virtue of the provisions of section 106(5) of the Town and Country Planning Act 1990 which was granted by His Honour Judge Seymour QC on 29 May 2013. The matter had been listed before Mrs Justice Jefford on 17 August 2017 but that hearing was adjourned by consent due to lack of court time. The injunction has not been in force during the past five months during the time it has taken for this matter to be relisted before me.
- 2 The Trustees are the registered owners of a Site known as the Riverine Centre, Abbey Mills, Canning Road, London, E15 3ND (“the Site”). The Site comprises land which is also known as the London Markaz. The Trustees are the trustees of the Anjuman-E-Islahul-Muslimeen of London. The Site is located in the Stratford area of the London Borough of Newham, close to West Ham Station and falls within an area which is known as the ‘Arc of Opportunity’. The Arc of Opportunity is explained by Amanda Reid in her statement dated 8 September. Amanda Reid is the head of planning and development within the Regeneration and Planning Directorate of the London Borough of Newham. As she sets out in her statement, she has had involvement in Newham undertaking different planning roles both within and outside the employ of the London Borough since approximately 1997.
- 3 In addition to the statement of Ms Reid dated 8 September 2017, I have had the benefit of a short statement from her dated 17 January 2018, together with a comprehensive statement from Mr Moez Rahman dated 9 August 2017 in support of the application, and Solad Sikander Mohammed, dated 15 January 2018. I have also had the opportunity to consider a number of documents exhibited to various statements, the documents relating to the lengthy planning history for the Site, including various statements and a petition demanding a withdrawal of the injunction relating to the use of the Site signed by many thousands.

REPRESENTATION

- 4 During the course of the planning history of this Site, the Trustees have been represented by experienced counsel and different teams of experienced experts. It is clear that that representation has been extremely expensive. There is no doubt that the Trustees take their obligations to their community extremely seriously. They have taken all steps that they can to ensure that the wishes of their community are fulfilled. There were recently some issues with respect to the Trustees’ legal representation and I asked Mr Rahman not to explain to me the reasons for that, for fear that he might inadvertently waive privilege.
- 5 Mr Rahman represented the Trustees for the purposes of the hearing before me and he proved himself to be an able advocate on their behalf. The London Borough of Newham was represented by Mr Douglas Edwards QC and I was much assisted by the written and oral submissions of both Mr Rahman and Mr Edwards.

THE APPLICANTS

- 6 As I have already set out, the applicants are the Trustees of the Anjuman-E-Islahul-Muslimeen of London, which is referred to by Mr Rahman as a charitable trust. It is not

clear from the documentation before me that the trust is registered with The Charity Commission. The Site is currently operating as a mosque and religious centre serving a large community of Muslims who belong to the Tablighi Jamaat movement. It is the only Tablighi Jamaat Site in London and the mosque is used extensively for regular faith-based purposes, including a regular Thursday evening lecture. Mr Rahman described the movement as having 80 to 100 million members worldwide and that there are many tens of thousands of adherents spreading from Oxford and Milton Keynes, across the South East of London and down to Brighton of all of whom use the mosque and religious centre at the Site. The constituency for the centre located on the Site therefore covers a very large geographical area and Mr Rahman told the court that thousands attend to listen to the Thursday night sermon each week, that the participants enjoy their community together, and that by coming together as a community, they are able to assist each other in the development of their family lives.

- 7 Mr Rahman referred to an article written by Rebecca Abrahamson in the Israel National News dated 6 May 2015. In that article, she talks about the Tablighi Jamaat movement being politically neutral, pacifist and totally severed from political action. The purpose of the movement, as she sets it out, is to contribute to the betterment of society. Mr Rahman expressed a concern that now the community had, as he put it, “gone on a journey” which means that they now have a mindset that allows the Trustees to negotiate, if the injunction is now not suspended, then there will be considerable disruption to the community which they would find difficult to understand. He said that there might be a return to the protests of before which appear to have been organised by a group calling themselves the Newham People’s Alliance. I am mindful of the considerable importance of this Site to Tablighi Jamaat and the wider Muslim community. I have, of course, to make a decision applying the relevant law to the facts as I find them.

THE SITE

- 8 The Site comprises 6.5 hectares of largely open vacant land. As I have mentioned above, it is within the Arc of Opportunity identified in the council’s local plan. It is an area identified in the development plan as providing the greatest scope to achieve transformational change for the residents of Newham by providing a combination of employment, high quality houses, including affordable houses, and services. The Site comprises part of the Core Strategy Spatial Policy S10 in the local plan and is identified as a strategic site. Its importance to the London Borough of Newham, with its plans for constructive regeneration of this area of London, cannot be underestimated. It is a brownfield site and comprises contaminated land, its previous use being as a chemical works. The closely located West Ham Station provides National Rail, underground, and Docklands Light Railway services. There are other local transport links through buses and Docklands Light Railway.
- 9 The London Borough of Newham itself is a highly deprived area and the designation of the Site within the Arc of Opportunity provides a focus to achieve transformational change for the residents of the borough. As I have said, the Site falls within the strategic site S10 within the Core Strategy Spatial Policy promoting the development of a mix of residential and employment uses. The housing needs in the London Borough of Newham are increasing as the population growth accelerates. Population growth of the London Borough of Newham between 2011 and 2036 is forecast to be between 30 and 41.5 percent according to the 2016 London plan referred to by Ms Reid in her statement. The London Borough of Newham is currently falling somewhat short of the annual target of 3,076 new homes per annum.

THE PLANNING HISTORY AND THE LITIGATION HISTORY

- 10 The planning and litigation history of the Site is long and complex. Much of the background is set out in a lengthy proof of evidence provided by a former team leader within the development control team of the London Borough of Newham. The use of the Site for the production of chemicals commenced in the late 19th century and ceased in the late 1980s. Most of the buildings on the Site were demolished with the gate house and a two-storey main building left in place. Because of its prior use, the Site is heavily contaminated.
- 11 The Trustees purchased the Site in 1996. They proposed the development of a mosque, school, and supporting residential and retail uses. The Trustees were informed that a temporary change of use would only be considered and approved if supported by a plan for a comprehensive mixed-use development. Various unauthorised developments have taken place on the Site and enforcement notices were served. Those importance notices were unsuccessfully appealed but not complied with. Planning applications were made to the London Borough of Newham for permission to retain various structures on the Site. The Trustees' use of the Site was from the very early stages of their ownership and occupation precarious as the planning policies had allocated the Site for a mixed-use development.
- 12 In 2001, temporary consent had been given to the Trustees for continuing use of the Site for religious purposes. In April 2003, retrospective temporary approval was granted for the structures on the Site to coincide with the permission given for temporary use. The temporary permission and approval expired on 1 November 2006. Planning history indicates that despite assurances that a master plan application posing genuine mixed user would be made and that there would be no further unauthorised development on the Site. Those assurances were not adhered to. No progress was made subsequent to 2006 by the Trustees in providing a master plan for the mixed use of the Site which mixed use could properly include the development of a mosque on the Site.
- 13 At a meeting on 2 June 2009, the London Borough of Newham advised the Trustees that unless there was meaningful progress of the master plan by the end of that year, the London Borough of Newham would be forced to pursue enforcement action. On 18 February 2010, the London Borough of Newham issued an enforcement notice to bring to an end the unlawful use and unlawful build development of the Site which had been erected without planning permission. It was clear from the evidence before me that the London Borough of Newham had given the Trustees a significant amount of time to comply with the requirement to propose a policy-compliant development scheme.
- 14 The enforcement notice was appealed and a public inquiry was held in February 2011. In May 2011, the planning inspector granted the Trust a further two years conditional planning permission in order to allow the Trustees a further opportunity to deliver a policy-compliant development scheme on the Site. The Trustees gave a unilateral undertaking in the inquiry in 2011 for the stated purpose of addressing the concern of the London Borough of Newham that if further time could be given by the inspector then that would merely continue the inertia that had been exhibited over the years with the Site being unlawfully used and the Trustees failing to put forward a policy-compliant development plan. The unilateral undertaking committing the Trustees to submission of a planning application within twelve months gave the inspector the assurance that inertia would not continue and that permission for temporary use could be given. In his decision, the inspector expressly acknowledged that temporary use might not necessarily cease at the end of the two-year period but that:

“At the end of the two-year period, the situation should be clear. Either there will be a master plan with planning approval with the potential to predict the future development of the Site or permission will not have been granted and the use must cease.”

- 15 The Trustee gave that unilateral undertaking with the benefit of leading counsel’s advice and for the purpose of gaining a benefit, namely a further two years’ temporary planning consent. That temporary planning consent expired on 23 May 2013. Despite the advice and despite obtaining the benefits sought, the Trustees failed to submit a policy-compliant planning application in breach of the undertaking. The consequences of such a failure have been explained to the Trustees by their own counsel who have set out in the course of submissions that:

“The LPA [the local planning authority] has within its own power the ability to enforce a section 106 which would bring the use to an end if such inertia manifested itself in the absence of a planning application and has entered into a realistic agreement in relation to the delivery of a mixed-use development.”

- 16 Section 106(5) of the Town and Country Planning Act 1990 sets out the statutory provision that:

“A restriction or requirement imposed under a planning obligation is enforceable by injunction.”

- 17 Section 187B of the Town and Country Planning Act 1990 provides that local authorities have the power to apply for such an injunction. Section 187B provides:

“(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach...”

- 18 The Trustees had submitted an application for outline planning permission for a very large mosque on the Site, together with associated faith-related development on 12 May 2012. This application did not comply with the development plan policy S10 and therefore failed to comply with the unilateral undertaking.

- 19 On 13 May 2013, an application was made for renewal of the temporary planning permission granted by the inspector on 23 May 2011 for a further period of two years. The outline permission application dated 12 May 2012 was refused by the London Borough of Newham and the application for renewal of the temporary permission made on 13 May 2013 was not determined within the prescribed time. Both matters were appealed and the Secretary of State covered both appeals for his own determination. A further report of notice was issued on 23 May 2013 which enforcement notice was appealed and conjoined with the other two appeals and, together, those appeals were heard at a public inquiry in June 2014.

- 20 In light of the failure of the Trustees to comply with what is a very carefully worded and detailed unilateral deed of undertaking dated 28 February 2011, whereby the Trustees bound their interest in the Site, the London Borough of Newham sought and obtained an injunction from HHJ Seymour QC on 29 May 2013. That injunction ordered that, forthwith, the Trustees carry out removal works for the unlawful development of the Site, including the immediate cessation and use of the land and all buildings as a place of worship.
- 21 On appeal to the Court of Appeal, Lord Dyson, then Master of the Rolls, giving the judgment of a very strong court comprising himself and Patten LJ and Vos LJ, set out the following under the heading “Third Ground: should the judge have suspended the injunction pending the appeal?”:
- “35. As I have said, the judge doubted whether, in the light of the plain breaches, he had a discretion to suspend the injunction. He decided that, if he had such a discretion, it would not be appropriate in the circumstances to exercise it. He gave no reasons for this conclusion.
36. In my view, the judge plainly had the power to suspend the injunction under the inherent jurisdiction of the court. He was wrong to express doubts about that. The question whether to grant an injunction is different from the question whether to suspend it and it calls for separate consideration. It did not necessarily follow from the fact that it was appropriate to grant an injunction that it was not appropriate to suspend it. The fact that the judge gave no reasons for refusing to suspend the injunction strongly suggests that he gave no proper separate consideration to that issue. It was inadequate merely to say that it was not appropriate to suspend ‘in the circumstances of the case’. In my view, the judge did not exercise his discretion properly. This court should, therefore, exercise the discretion afresh in the light of the situation that obtains now.
37. I would emphasise at once that the power to suspend a section 106(5) injunction should be exercised sparingly. Otherwise, the planning purpose achieved by a section 106 planning obligation will be frustrated. But, as I have said, it does not follow from the fact that the existence of an impending planning appeal is not a good reason for refusing an injunction that its existence may not justify suspending the injunction pending the appeal. The grant of an injunction to enforce a planning obligation reflects the court’s view that a party should normally be held to its bargain. But there may be circumstances in which it is fair, just and reasonable to suspend the injunction.
38. In my view, there are such circumstances in the present case. First, the appeal against the refusal of the application for planning permission for a single faith-based use contrary to the Development Plan is likely to be determined before the end of this year. This is the main appeal. If it succeeds, Mr Edwards rightly concedes that it would be difficult for the Council reasonably to continue to insist on the Trust complying with the Undertaking. It is impossible for this court to predict the outcome of the appeal. The appeal is one of unusual sensitivity and importance for the area. That is why it is to be determined by the Secretary of State. It is far from being an abusive appeal.
- ”

39. Secondly, to require the Trust to carry out the Removal Works will cause it and the members of the community considerable hardship. That hardship will have served little purpose of practical value if the main appeal succeeds. I say ‘little purpose’ because I accept that the enforcement of planning obligations of itself serves the important general purpose of keeping parties to their obligations. But that purpose should not be given undue weight in a case where the planning future of the Site will be fundamentally changed in the event of a successful appeal and where compliance with the injunction will cause serious harm. Thirdly, it is not suggested that there is any particular planning detriment in allowing the status quo to continue for a relatively short period until the planning future of the Site is finally determined. Nothing can realistically be done by the Council in relation to the Site until the outcome of the appeals is known.
40. Fourthly, a refusal to suspend the injunction would effectively preempt the outcome of the appeal against the Council’s refusal to vary the temporary planning permission so as to extend the life of that permission by two years until 23 May 2015.
41. Looking at the matter broadly, I consider that the circumstances of this case justify a suspension of the injunction. The combination of (i) the imminence of the appeals; (ii) the harm that the Trust and the members of the community will suffer if it has to carry out the Removal Works and its appeals succeed will be considerable; and (iii) there will be little if any countervailing planning harm if the injunction is suspended until the outcome of the appeals is known.”

22 In the *London Borough of Newham v Ali & Ors* [2014] EWCA Civ 676, the Court of Appeal sets out in clear terms the basis upon which a section 106(5) injunction might be suspended. Planning obligations created by section 106 of the Town and Country Planning Act 1990 are contractual in nature. In enforcing the obligation, the planning authority is exercising a public function in the public interest. By granting an injunction, the court is holding the party who has undertaken unilaterally to fulfil a planning obligation to actually fulfil that obligation. They are being held to their bargain. The court does have an inherent power to suspend a section 106(5) injunction but that power is to be used sparingly where the facts are such that it is fair, just, and reasonable to grant an injunction.

23 In the unusual circumstances of this case when the matter was before the Court of Appeal, had the Trustees succeeded in the ongoing planning appeals, then the situation would have been fundamentally changed. Enforcing the injunction immediately, would have led to the possibility that the Trustees would be compelled to do something which might in the near future be held to be permissible. The Secretary of State, in fact, dismissed all three appeals by a decision letter dated 28 October 2015 with the consequence that the use of the Site as a mosque with associated activities will be required to cease. An application to bring judicial review proceedings against the Secretary of State’s decision was refused by Ouseley J after a day’s hearing. He found the application for permission to bring judicial review proceedings unarguable.

24 On 10 April 2017, Lewison LJ refused the application for a statutory review on the papers and on 6 July 2017, Lindblom LJ refused the Trustees’ application to renew the section 288 applications at an oral hearing. The Trustees’ applications for statutory review thereby came to an end as at 23 August 2017, six weeks after the decision of Lindblom LJ. The

Trustees have, throughout this lengthy and extensive planning history and despite the suspension of the injunction and the granting of temporary planning permission on different occasions, failed to submit a policy-complaint plan for mixed use development for the Site. The use of the land therefore remains unlawful at this time.

THE CURRENT POSITION

- 25 Mr Rahman on behalf of the Trustees submits that the community has gone on a journey such that they are now supportive of a development of the land which would comply with planning policies. Lord Dyson in the Court of Appeal held that an injunction, where it was fair, just, and reasonable to do so, could properly be suspended. Mr Rahman contends that as the Trustees are now fully committed to entering into an agreement with a development partner, it would be fair, just, and reasonable to suspend the injunction again.
- 26 There have been, according to Mr Rahman's witness statement dated 9 August 2017 and his oral submissions before me, a number of potential development partners. There were meetings with one housing group between October 2016 and July 2017 but the Trustees concluded that that large housing were unable to offer a commercial deal which the community and Trustees would accept. Mr Rahman gives evidence that land agents approached him during 2017 and put him in touch with various developers. For reasons of potential commercial sensitivity, I will not refer to the developers within this judgment by name but all those referred to in the evidence are large developers who would be the sort of developer who might be interested in developing this Site. None of these potential developers has entered into an agreement with the Trustees and all that has gone between the Trustees and those particular developers has come to nothing.
- 27 Finally, the Trustees were introduced to a smaller developer, but a developer with experience of dealing with contaminated land with whom Mr Rahman says a deal will be reached. In August 2017, Mr Rahman set out in his witness statement that after approximately two months, the Trustees would pick a developer and thereafter, a four-month exclusivity period would be granted to that chosen developer in order that Site investigation works could be undertaken. A proposal for a possible scheme would then be put forward and a decontamination strategy worked through. After that, it is said by Mr Rahman, the planning application will proceed taking potentially a further nine to twelve months. Mr Rahman said on behalf of the Trustees that if the appropriate mixed used development was not being proposed by the chosen developer then the Trustees would not agree to it, the position now being that the Trustees wish to comply with the planning needs of the local authority.
- 28 We are now in late January, five and a half months on from Mr Rahman giving that statement in August 2017. Despite that, when I heard from Mr Rahman last week, no progress appears to have been made. There has been no licence or exclusivity agreement entered into with the proposed development partner, no steps have been taken with respect to Site investigation, decontamination strategy, or an outline proposal for permission. There have been no pre-submission consultations with the London Borough of Newham. There have not been the sort of discussions and negotiations which must take place where there is a potential development on a site of this size, complexity, and strategic importance.
- 29 The Trustees have not instructed solicitors to carry out due diligence or verification of the exclusivity or licence agreements that have been proposed by the chosen developer. The Trustees are very far from coming to any sort of agreement for the development of this Site. On the basis of what I was informed in court last week, Mr Rahman has not yet sent to the potential developers copies of contamination reports of the Site. Given the prior use of this

Site and its contamination, the developers would need to see those reports extremely early in the process. The Trustees have not moved on this at all.

- 30 In my judgment, the Trustees are, despite protestations to the contrary, continuing to procrastinate. There is no obvious will to enter into any agreement which could lead towards a development of this Site which would comply with planning requirements. The inertia referred to back in the planning enquiry of 2011 still continues despite the very considerable indulgences that the Trustees have been given both by the granting of temporary planning permission and the earlier suspension of the injunction. It is notable that the Trustees have been given more than five months of the suspension that they were seeking in August merely because the case could not be heard then and has been adjourned. During that period of more than five months, nothing has happened in line with the timetable that was being proposed in the statement supporting the application for an extension. No progress has been made positively to move the process along.
- 31 It is also notable that the proposed development partners who have provided draft exclusivity and licence agreements have not provided any evidence to support this application. It is said that they are anxious not to become involved because of the current litigation but if they were genuinely interested in progressing this matter, the court would expect them to say so as it is in their financial best interests.
- 32 The oral submissions of Mr Rahman also revealed a fundamental disagreement between the Trustees and the proposed development partners, the Trustees contending that they should be entitled to a licence of many hundreds of thousands of pounds, while the developers are contending that there only needs to be a nominal consideration of one pound. That is plainly a significant matter and could well be an indication that this proposal is not going to progress at all. In scrutinising the evidence put forward on behalf of the Trustees and the submissions of Mr Rahman, matters are not nearly as far progressed or certain as was being suggested to him.

HARDSHIP

- 33 Undoubtedly, the enforcement of this injunction will cause hardship to the adherents of the Tablighi Jamaat who have been enjoying the Thursday lectures and other associated activities which take place on the Site. Those activities, however, are unlawful and while undoubtedly a benefit to the community and one they would miss, it has to stop. The Trustees, acting with legal advice, gave a unilateral undertaking in order to obtain the very real benefit of a further two years temporary planning permission to make the activities on the Site lawful. From the outset, the development of the mosque was contrary to planning permission and therefore precarious. The current use of the Site, contrary to the enforcement notice, is a criminal offence. The injunction is simply a means of enforcing that which the Trustees gain. That is an enforceable undertaking in order that they could, back in 2011, achieve a further period of temporary planning permission. The court will hold parties to their legally binding undertakings.
- 34 If the Trustees had complied with the undertaking given on 28 February 2011, now nearly seven years ago, then the court should not be in the position it is now. As Lord Dyson said at paragraph 30 of the Court of Appeal determination in 2014:

“The fact remains that the Trust entered into the Undertaking in order to advance its case before the Inspector that it should be granted temporary planning permission authorising its current use of the Site. It did so freely and it recognised its purpose and effect. It was fully aware of what it was

committing itself to do and the consequences that would follow if it did not comply with its obligations. That is clear from the submissions made at the Inquiry by its leading counsel, but would have been clear in any event. ...it is not oppressive to enforce the obligation. It is simply a case of holding the Trust to its agreement.”

- 35 The impact on the community is as a consequence of the unlawful use of this land which is without planning permission. Mr Rahman submits that the Trustees have always endeavoured “to be friends with the local authority”. Unfortunately, the Trustees have been unable to comply potentially because of pressures imposed upon them by the wider community. The potential or very real hardship to the community does not mean circumstances exist which would result in my using the power to suspend this injunction. The evidence is simply not available to support the Trustees’ contentions. There is obfuscation and prevarication and to suspend the injunction in these circumstances would, in my judgment, entirely defeat the purpose for which the section 106(5) injunction was granted. It would undermine the statutory regime for the enforcement of planning control. The Trustees have to be held to their undertaking. The circumstances do not provide a reason for suspending the injunction at this time and, consequently, this application for a further suspension of the injunction is refused.

L A T E R

- 36 Before dealing with the issue of costs and hearing Mr Rahman with respect to those, he makes an application for permission to appeal my determination not to further suspend the injunction granted in 2013. He makes that application for permission to appeal on three grounds. First, he says that there is an application pending to the European Court of Human Rights. That was lodged on 5 January 2018. Secondly, he says there are mitigating circumstances with respect to the failure to move matters on with regard to entering into agreements with the potential development partners and, third, he refers to the fact that he has, he said, spoken to the proposed development partner, both the managing director and the land director, and they have expressed a wish to progress this matter.

- 37 Dealing with each of those grounds of appeal in turn, so far as the application to the European Court of Human Rights is centred, this is not an issue that was raised at all in the course of either the written skeleton argument nor in the oral submissions of Mr Rahman before me. It was not put forward as a basis upon which, so far as the hearing is concerned, that the Trustees were continuing to rely. It appears now, having taken that stance and have not promoted that as an aspect that, in fact, the Trustees do wish to raise that point. Reference to it in the skeleton argument and drafted by counsel is not a great surprise given that it does not appear that that application was made until after legal representation had come to an end and the Trustees were acting in person. It is surprising that Mr Rahman had not mentioned it all in his oral submissions. Reference is made in the witness statement of Mr Mohammed, one of the Trustees. He refers to it in these terms at paragraph 6:

“At the same time, we are concerned for our congregation that if this centre is closed then where these thousands of people would go. To keep the function, we have submitted an ECHR (European Court of Human Rights) application ...”

- 38 It appears from that statement that the purpose of bringing the application to the ECHR is, indeed, to seek to avoid the injunction taking effect. There has, been no progress with regards to that application it having been made days before the hearing before me. I can see no merit whatsoever in suspending this injunction pending the possibility of an application

having any prospect of progress before the ECHR. That clearly is a matter for the ECHR and I am not going to comment as it would be inappropriate for me to do so as to the merits or otherwise of that application. However, in light of the timing of that application, it would be wrong for me to suspend the injunction on that basis and I am not going to give permission for an appeal on that ground.

- 39 So far as the second ground is concerned, that is a shorter matter. Mr Rahman says that there are mitigating circumstances as to the reason for the delay in progressing this matter. That is because the solicitors they had instructed did not deal with the licence agreement whereas they have been instructed to do so. That, of course, is a matter between the Trustees and their legal advisors and it does not give a basis for excusing the delays in this case and as was fully explored in oral submissions before me, the Trustees have failed to ensure, for whatever reason, that this matter progressed and as I have set out in detail in my judgment, in my judgment, having considered all the evidence and all the circumstances and history of this matter, there has been further deliberate delay and procrastination with regard to this. I refuse permission on ground 2.
- 40 So far as the third matter is concerned, Mr Rahman submitted that he has had recent discussions with the managing director and land director of the proposed development partner and it may be that they are ready to progress. Of course, the imposition of the injunction ensuring that there is fulfilment of the requirements to comply with the planning permission and the unilateral undertaking would not prohibit the Trustees from actually progressing matters properly so as to comply but an oral submission that there is interest from an other party does not take the matter any further. I have already dealt with those issues within my judgment and I do not give permission on that third ground.
- 41 The basis upon which permission is sought does not, in my judgment, give any reasonable grounds for succeeding on an appeal and therefore it is refused.

L A T E R

- 42 Having dealt with the substantive application and the application for permission to appeal, I am now asked to consider costs in this matter. The London Borough of Newham have been put to some trouble with respect to this application and have incurred costs to do with it. At the time the application was initially made, both leading and junior counsel were instructed on behalf of the Trustees and matters were dealt with on that basis. Counsel for today has very fairly pointed out that inadvertently, more money is claimed for legal advice from counsel than should properly have been associated with this particular application and with a long, complex litigation history. He has therefore reduced the overall figure claimed to £22,557.
- 43 The Trustees do not seek to dispute that costs should, in accordance with the Civil Procedure Rules, fall upon them having failed in their application and, indeed, they do not seek to argue about the amounts claimed.
- 44 I have already indicated to counsel that preparing a bundle of authorities in the sum of £240 should not be allowed and I am not going to allow the half hour claimed for attendance on the client. It seems to me that that sum properly falls within attendances on the London Borough of Newham.
- 45 There have been considerable attendances upon them both personal attendances and also in letters out. However, considering the complexity of this matter, the history of this matter, and the fact that the London Borough of Newham have sensibly used solicitors at the

appropriate level for various work that needs to be done, I cannot consider that it would be right to reduce those figures claimed on attendances. Consequently, the only two figures that should be removed from the new total of £31,134 is the sum of £240 and the sum of £110 coming off the schedule and would ask counsel to simply make the changes to that and calculate the final figure.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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