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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2020] EWHC 3647 (Admin)



No. CO/4407/2020

Royal Courts of Justice

Thursday, 17 December 2020

Before:

MR JUSTICE MARTIN SPENCER

B E T W E E N :

THE QUEEN
ON THE APPLICATION OF
BLUEBIRD BOATS LIMITED

Claimant

- and -

(1) THE ROYAL PARKS LIMITED
(2) THE SECRETARY OF STATE FOR DIGITAL,
CULTURE, MEDIA AND SPORT

Defendants

MISS M. LESTER QC, MISS S. LOVE and MR R. HOWELL (instructed by Fieldfisher LLP)
appeared on behalf of the Claimant.

MR A. BATES (instructed by Bates Wells) appeared on behalf of the First Defendant.

THE SECOND DEFENDANT did not appear and was not represented.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

- 1 This is an application by the claimant, Bluebird Boats Limited, for permission to bring judicial review proceedings in relation to a decision dated 12 November 2020 by the defendant, The Royal Parks Limited (“TRP”), not to grant the claimant an extension to a contract by way of concession for the operation of boating facilities in Hyde Park, on the Serpentine, and in Greenwich Park. In addition, there is an application for interim relief pending the full decision of the court, should permission be granted.
- 2 The background facts are that the claimant is the alter ego of Mr Peter Scott, who began running the boating services for The Royal Parks in Hyde and Greenwich Parks through Bluebird Boats Limited (“BBL”) on 23 March 1998. On 17 December 2004 the claimant entered into a contract with the Secretary of State for the claimant to provide the boating services in the two parks, the contract expiring on 30 November 2019 and the contract was, thus, for a period of fifteen years.
- 3 On 10 October 2007 the Secretary of State granted the claimant a licence to demolish the former boathouse on the Serpentine and carry out preparatory works relating to the construction of a new boathouse and a new licence to construct and erect a boathouse was granted on 22 February 2008.
- 4 The defendant, TRP, was incorporated by the Secretary of State on 19 February 2016 and it took over the functions of the Royal Parks Agency, which was an executive arm of the Secretary of State for Culture, Media and Sport, that Secretary of State being the predecessor of the second defendant to this application, who is the Secretary of State for Digital, Culture, Media and Sport. With the incorporation of the first defendant, the parties agreed a contract novation on 26 May 2016 and TRP commenced management of the Royal Parks on behalf of the Secretary of State as from 15 March 2017.
- 5 On 19 March 2019, BBL and TRP agreed an extension to the contract of 17 December 2004 until 10 November 2020, that is an extension of some three weeks under a year – about a forty-nine week extension – on the ostensible basis that TRP were not ready at that time to commence a new tender process whereby the concession would be put out to tender for competitive offers.
- 6 On 23 October 2019, two employees of TRP, Ms Jo Fyfe and Mr Steve Edwards (the Head of Special Projects) had a meeting with Mr Scott of BBL when Ms Fyfe explained that TRP intended to conduct a tender exercise further to the forthcoming expiry of the contract. Mr Scott asked whether TRP would simply extend the contract beyond 2020 and it was made clear to him that that was not the intention and that TRP intended that a new contract should be awarded following a tender exercise and that that would come into effect following the expiry of the existing contract. Ms Fyfe made it clear that all options were being considered in respect of the use of the lake. Thus, it appears to have been the intention, towards the end of 2019, that the tender process would be completed in time for the new concessionaire to take over at the expiry of the existing extended contract with BBL. There were then, in the course of January 2020, further meetings between Ms Fyfe and Mr Scott to discuss the action required from BBL at the expiry of the contract.
- 7 On 27 January 2020, Mr Scott sent an email to Andrew Scattergood of TRP asking for a contract meeting at his earliest convenience, saying:

“This is to ensure that there is a smooth tender process. I would also like to say thank you.”

8 That led to a meeting between Mr Scott, for BBL, and Ms Fyfe and Mr Scattergood for TRP on 30 January 2020. Arising out of that meeting, Ms Fyfe sent an email to Mr Scott saying:

“Following our meeting on 30 January, I have also followed up on the question you raised regarding the ownership of the Boathouse. The legal position is clear – the Boathouse and Jetty are vested in the Secretary of State on behalf of the Crown.”

9 Also on 30 January 2020, Mr Scattergood sent an internal email to Mr Alan Buchanan, who is TRP’s general counsel, reporting on the meeting which he and Ms Fyfe had had with Mr Scott. In that email, Mr Scattergood said:

“The meeting started with a summary of Peter’s involvement in the parks for the past 20 years (by way of background).

He then moved onto the key issue – ownership of the boathouse in Hyde Park (which he built in 2007/8. He claims he owns the boathouse. Our view (which we stated clearly in the meeting) is that we own it at the end of the contract. [Having subsequently checked the contract, it seems crystal clear to me that we own it (Jo will send the electronic version).]

He suggested that he employs a QC to do a ‘fact finding assessment’ and suggested we should in some way be party to that process.”

Thus it was that at the meeting of 30 January Mr Scott raised, for the first time, an issue in relation to the ownership of the boathouse which had been built some twelve or thirteen years previously.

10 There were further email exchanges on 4 February 2020, so that Ms Fyfe wrote to Mr Scott asserting that the ownership of the boathouse was vested in the Secretary of State on behalf of the Crown and Mr Scott, sending an email to Mr Scattergood, repeated his view that BBL owned the building and that he had engaged Queen’s Counsel to give an opinion on the matter.

11 On 13 March 2020, TRP wrote a letter to Mr Scott stating the view that a dispute existed as to whether the boathouse had vested in Bluebird Boats Limited or the authority upon its completion. The letter stated:

“The contract provides a mechanism for dispute resolution which, subject to the proposals set out below, should now be followed. Clause 53 of the contract provides that all disputes will, in the first instance, be referred to the Project Board for resolution. However, since such a Board no longer exists, the first stage to be followed is as per clause 53.2 with the matter being referred for resolution to the Chief Executive of the Authority, now Andrew Scattergood, as Chief Executive of The Royal Parks as the successor to the agency, and the Managing Director of the concession holder. It is our view, having regard to the discussions that have taken place to date, that following the process set out in clause 53 is unlikely to result in a resolution. The parties have made their position clear and there appears no scope for negotiation. The Authority would therefore propose for the matter to be immediately referred to the court for determination.”

This was, of course, right at the start of the outbreak of the Covid-19 pandemic which led to the first lockdown as from 26 March 2020.

- 12 In that context, on 20 March 2020 Messrs Debenhams Ottaway, solicitors then instructed for BBL, wrote asking TRP to confirm whether they agreed, in the circumstances, that it was appropriate to put the resolution of the boathouse dispute on hold until there was more certainty as to the effect of the Covid-19 outbreak. On 20 March, Mr Scott responded to TRP's letter of 13 March, confirming that he wished to adhere to the mediation process set out in clause 53 of the contract. On 23 March, the Prime Minister announced the Covid-19 restrictions, which came into force from 26 March, and, as at that date, BBL were required to cease trading.
- 13 There were various further letters and telephone meetings, including a letter from Mr Scott to Mr Scattergood of 7 April suggesting that the contract be extended for a further year, responded to in a letter of 8 April from Mr Scattergood rejecting that suggestion.
- 14 There was then a meeting held by Microsoft Teams, given the lockdown restrictions, on 20 April 2020 between Mr Scott and Ms Fyfe. In that meeting Ms Fyfe reiterated that "until the dispute was resolved no conversation on any extension would take place". Thus, TRP made it clear that they were not prepared to enter into any discussion or negotiation concerning an extension of the existing concession contract until the dispute over the ownership of the boathouse was resolved.
- 15 With the end of the lockdown, BBL resumed trading on 15 July 2020 and, two weeks later, on 29 July 2020, the first day of the mediation under clause 53 took place concerning the boathouse. The second, and final, day of the mediation was on 2 September 2020 and the mediation was not successful in resolving the dispute between the parties as to the ownership of the boathouse. This arises from para.3.13 of the statement of Mr Alan Buchanan, made for the purposes of this application, where he states that the dispute led to an unsuccessful mediation which, after being delayed by the claimant, took place on 29 July and 2 September. He said that given much of the correspondence in relation to that mediation is covered by privilege, there are limits to the evidence he can give about the events leading to the claimant's challenge.
- 16 On 1 October 2020, Ms Fyfe sent a further letter to Mr Scott regarding the expiry of the contract which, by now, was some six weeks away, and setting out a proposed timeline for the handover of the contract.
- 17 On 6 October BBL informed TRP of its intention to apply for an extension of the contract to 31 March 2023 by way of relief under the Covid-19 PPNs, which had come into force on 25 June 2020, one relating to supplier relief due to coronavirus and the other relating to recovery and transition from Covid-19. On 7 October BBL made their application for Covid-19 supplier relief and for the extension of the contract to 31 March by way of relief under the Cabinet Office's Covid-19 Procurement Policy Notes. However, this was rejected by BBL on the grounds that The Royal Parks is a registered charity contracted by DCMS to supply services but are not a contracting authority as defined in the PPNs and so are excluded from the PPN guidance. Whether that was or was not correct has not been resolved but forms no part of my function in deciding this application today.
- 18 As well as making this application, BBL sought support from outside sources. For example, they wrote to Ms Rachael Robathan, the leader of Westminster City Council, on 9 October seeking support for the request for a contract extension and there was also a letter to Ms

Sarah Healey, Permanent Secretary at the Department of Digital, Culture, Media and Sport on 14 October.

- 19 On 20 October 2020, Mr Alan Buchanan, TRP’s General Counsel, wrote to BBL reiterating TRP’s rejection of the application for an extension of the contract in accordance with a letter which had previously been sent by him to BBL on 12 October 2020. In the 12 October letter Mr Buchanan had said that it seemed to TRP that the application was “an attempt to avoid recognising the imminent expiry of the contract despite it being confirmed in your recent application that your contract comes to an end in November 2020”. He insisted that the claimant should respond to Ms Fyfe’s letter of 1 October by close of business on 14 October. That letter of 1 October had proposed a timetable for the handing over of the contract back to TRP. Mr Scott had responded to Mr Buchanan’s letter in a letter of 14 October and it was that which prompted Mr Buchanan’s further letter of 20 October.
- 20 In that letter of 20 October, Mr Buchanan said:
- “In your first comment you refer to Andrew Scattergood’s letter of 9 July 2020 where he said ‘I have said previously, we will not consider a contract extension while we are in dispute’. This was a reference to a contract extension, not to a Covid-related application for relief. It is denied we have ever made such a statement with regard to your recent Covid-related application for relief.”
- 21 In relation to the dispute concerning the ownership of the boathouse, the claimant used solicitors, Barker Gillette, who had written to the defendant suggesting that TRP issue Part 8 proceedings to resolve the ownership of the boathouse and that pending resolution of those proceedings BBL remain in occupation and remain trading providing boating services on the lake. That was a letter from Barker Gillette to Bates Wells, who have at all times represented TRP in these proceedings. In that letter Barker Gillette referred to the claimant having taken advice from two leading counsel, who are named, and suggested that BBL had been advised that it had a strong case for saying that it was the owner of the boathouse and entitled, indeed obliged, to take it away once the concession agreement had come to an end. Although arguably that constitutes a waiver of privilege, I have not seen those Advices from leading counsel in relation to the boathouse dispute and, in any event, that dispute is not for me to decide today.
- 22 On 2 November 2020 Bates Wells responded to Barker Gillette rejecting their suggestion of a contract extension.
- 23 On 5 November 2020, the second lockdown regulations came into force in order to ameliorate the effect of the second wave of the coronavirus pandemic. It would appear that BBL considered that they were not covered by the second lockdown regulations and continued to trade. However, on 12 November 2020 a Sgt Daniel Window of the Metropolitan Police sent an email to Mr Scott advising him that the business should not be operating under the lockdown regulations and Mr Scott immediately closed down the business so as not to be in breach of the law.
- 24 In the meantime, on 10 November the contract had expired. That led to two letters being written on 10 November, by BBL to Mr Buchanan of TRP, dealing, firstly, with the issue of the applicability of the PPNs, to which I have already referred, and again seeking to reach agreement for there to be a short extension of the contract which, it was suggested, should be for six months.

25 The following day, on 11 November, Fieldfisher, instructed by BBL, wrote to TRP referring to previous correspondence and proposing that TRP agree in principle to the granting of an interim contract for at least twelve months to BBL and, pending the conclusion of such a contract, that BBL be granted permission to continue to operate the boating services in Hyde Park and Greenwich Park on the same terms that were previously applicable before the expiry of the contract. Thus, the position as at 11 November was that the original contract had expired, BBL remained in occupation of the boathouse and remained providing boating services on the lake until told not to by the Metropolitan Police the following day, and were proposing that there be a new contract granted by way of an interim contract for a year and also, pending the agreement of the terms of an interim contract, that BBL be permitted to continue to provide boating services on the same terms as before.

26 These proposals were rapidly rejected by Bates Wells in a letter of 12 November 2020. This is the letter which is designated by the claimant “the decision letter”, which is the subject of these proceedings. In that letter Bates Wells, on behalf of TRP, stated that their client was not prepared to grant BBL a new interim concession contract for at least one year, setting out eight numbered reasons:

- (i) The request for a new concession contract of “a year or so” was far too vague and provided no certainty that BBL would agree to vacate upon the expiry of that contract.
- (ii) TRP did not consider itself bound by the PPNs, for the reasons previously adumbrated in correspondence.
- (iii) There was a risk that, in granting BBL a new concession contract for a year or so, this would introduce “a risk of breaching regulation 8 of the Concession Contracts Regulations 2016 for the upcoming competitive tender process, as all those tendering for the concession contract would have been affected by the recent pandemic, and deferring the starting date by granting the requested new concession contract/Application so as to improve your client’s financial position could be seen to give your client an unfair advantage over all others bidding”. That was stated to be particularly so given that BBL had previously confirmed that the reason for an extension of the contract being required was because of the need to repay two loans taken out in May and June, those loans clearly being required because of the impact of the first lockdown. Thus, as I understand it, one of the perceptions of TRP was that were they to grant a further extension or a new contract to BBL, that would give BBL some kind of competitive advantage or springboard in relation to an application which BBL might make under the proposed tendering process.
- (iv) It was said that as per the terms of the agreement extending the contract in March 2019, it had been agreed that the extension might be the last extension of the contract and any further contract would be subject to a competitive tender process, whilst what was now being proposed was a new contract which would not be subject to the competitive tender process. The letter stated:

“It is noted that since March 2019 your client has only taken steps to thwart the commencement of the competitive tender process by claiming ownership of the boathouse, pursuing claims for Covid-19 relief, claiming to have a contractual right to renew pursuant to the Landlord and Tenant Act 1954, lobbying MPs, instructing 4 law firms to demand an extension to the contract and 2 QCs, and now continuing to trade beyond the expiry of the contract.”

It is not clear to me why it was being suggested that this had been going on since March 2019 but certainly since March 2020 BBL had been taking such steps as it

could to persuade TRP to extend the contract and any suggestion that this was being done mischievously by BBL has been eschewed by Mr Bates on behalf of TRP, who has accepted that, as a commercial organisation, BBL have simply been using all weapons in its armoury, perfectly understandably, to improve and maximise its position in relation to this matter.

- (v) Bates Wells referred to the suggestion that, by reference to BBL's own accounts, it would lose money trading and so they could not see how it would be financially beneficial to BBL to continue to trade - although I comment that this is surely more a matter for BBL than for TRP.
- (vi) Bates Wells referred to the need to resolve the dispute over the ownership of the boathouse so that the competitive tender process could be started. They said in that paragraph:

“Instead your client pursues the maintenance of the status quo, which does not deal with the principal issue in hand, namely the ownership of the boathouse.”

- (vii) Bates Wells state that even if TRP were prepared to grant a new short-term contract, it could not be on the same terms as the previous contract because that did not provide best value for TRP.
- (viii) Finally, Bates Wells referred to the fact that TRP is a charity and “as such must utilise its assets to further its charitable objectives, and given that the previous contract did not provide best value for our client, hence the requirement to retender, and in light of the points above, particularly those in paragraph 3, our client's trustees are not in a position to agree to grant any new interim contract.”

27 This letter of 12 November was swiftly followed by a further letter from Fieldfisher on 13 November, which is a Pre-Action Protocol Letter before Claim. It rejected the reasons set out by Bates Wells in their letter of 12 November, dealing with each of the eight reasons *seriatim*, and then challenged the decision on the basis of four grounds.

- (i) Firstly, they say it is to be inferred that the real reason for the decision was that TRP was unwilling to consider the proposals for an extension because of the property (ie Boathouse) dispute between the clients and asserted that this was not a proper parks management purpose.
- (ii) Secondly, TRP had failed properly and with an open mind to exercise the discretion contracted out to it.
- (iii) Thirdly, the decision was irrational or took into account irrelevant considerations. The consequence of the decision would be that no boating services would be provided in the relevant parks pending the conclusion of a new tender, which would be damaging to TRP's finances as well as to the users of the relevant parks and would cause severe financial consequences for BBL including redundancy of employees and the risk of failure to repay loans.
- (iv) Finally, it is pointed out that the irrational nature of the decision and the improper purpose which vitiates it is demonstrated by the different approach it had taken in the case of the boating concession to another concessionaire in Regents Park where, in fact, a contractual extension had been granted, and it was asserted that there was no proper or lawful basis for treating BBL any differently from other concessionaires.

28 Fieldfisher required a response by 18 November 2020 but Bates Wells were not able to respond by then, or by 20 November, which was the revised date then proposed by Fieldfisher on 17 November, and these proceedings were issued on 25 November, supported by a witness statement from Mr Scott.

- 29 There was an application for urgent consideration, which came before Ellenbogen J on 26 November, and she made an order for directions on that date for filing and serving of acknowledgements of service and for this hearing to take place today, 17 December 2020. An application to vary that order was made to Henshaw J on 30 November and was rejected. In the meantime, Bates Wells had responded to the pre-action protocol letter of claim with a letter of response on 27 November 2020 and, on 3 December, Fieldfisher confirmed BBL's intention to continue with its applications for permission to apply for judicial review and for interim relief. Summary grounds of resistance were filed on 4 December 2020 and BBL filed a reply on 11 December 2020.
- 30 In support of this application, Miss Lester QC has submitted that the letter of 12 November 2020 constituted a decision which is amenable to judicial review and that the reasons set out in that letter are arguably not capable of justifying the decision. Although various matters have been raised, at the heart of Miss Lester's submissions is the argument that TRP closed its mind to the possibility of granting an extension of the contract because of the dispute in relation to the ownership of the boathouse. What is said is that the ownership of the boathouse is a separate dispute which should not have played any part in the reasoning or rationale of TRP in deciding whether or not to grant an extension to the contract. The reason is that there is no connection or nexus between the dispute over the boathouse and whether or not boating services should continue on an interim basis until the dispute over the boathouse was resolved and it would be possible for TRP to conduct the full tendering process for the new concession.
- 31 It appears from documents which have been supplied by TRP that, at board level, the decision has been taken that in principle boating remains a desirable activity for the Serpentine and that they anticipate the activity being suspended until some time in 2022 by when the tender process will have been completed and there could be a new concession granted. Thus, the decision of TRP not to grant an extension entails by necessity the closing down of the boating on the Serpentine for a significant period of time, including the whole of 2021. Miss Lester points to the lack of reference in the letter of 12 November to the public interest in the continuation of boating on the Serpentine, this particularly being an amenity which can continue despite the Covid-19 restrictions, whether Tier 1, 2 or 3, as we now have¹, and therefore is a significant benefit and amenity to the public which any responsible authority, such as The Royal Parks Limited, would take very seriously into account before denying the public an amenity of that kind. However, instead of taking such legitimate matters into account and justifying the closing down of this traditional activity, which has been taking place on the Serpentine for many, many years, the defendant has taken its decision by reference to effectively matters concerning personalities and, in particular, an element of pique or frustration at the fact that the dispute over the boathouse has arisen and has not been resolved. Miss Lester submits that this is the only reasonable and proper interpretation of the history of the matter, as I have related it, and the way in which the decision letter has been expressed.
- 32 For the defendant, Mr Bates has submitted that the approach of TRP and the decision it has made has been taken as part of a commercial negotiation because it seemed to the defendant that it was desirable to maintain clarity that the contract should come to an end on 10 November should the dispute over the boathouse remain unresolved. He refers to the statement of Mr Buchanan made in these proceedings and, in particular, at para.3.20 where he said:

“This led TRP to the view that, given the potential for the dispute [that is the dispute over the boathouse] to disrupt the smooth running of the tender exercise, it would be best to focus on resolving the dispute. Without

waiving privilege, it was considered that providing an extension would reduce the focus on resolving the dispute, and that this could delay the tender process and the granting of a new tender further. TRP's view – that it was undesirable to extend the contract while the dispute regarding the Boathouse continued – was communicated to Mr Scott on a number of occasions ...”.

33 The question for me today is whether permission to bring judicial review proceedings should be granted and whether the claimant has raised a prima facie case that the decision represented by the letter of 12 November 2020 was unlawful. In my judgment, it is arguable that the letter was unlawful. It seems to me to be arguable that in relation to the dispute between the parties over the ownership of the boathouse the defendant has allowed itself to lose sight of the wood for the trees. By that I mean that it has taken a decision which arguably has been taken for the wrong grounds, namely a negotiating tactic in order to, as it were, bring Mr Scott to heel in relation to the boathouse dispute and has lost sight of the significant benefit to the public and its charitable objectives, which it is obliged to follow. To close down all boating on the Serpentine effectively for almost two years and, in particular, for the whole of the summer of 2021, is a huge decision because it deprives the public of an amenity which is not only of enormous benefit and enjoyment to the public but also of significant lucrative value to both parties in this case. I understand that the income from the summer season is expected to be a sum approaching £2 million and with its right to 15 per cent under the old contract, which expired on 10 November 2020, the defendant could have expected a sum in the region of £175,000 and, of course, it would have provided income for the defendant, employment for its employees and a much valued amenity.

34 I consider it arguable that the defendant, in making the decision that it did in the way that it did, has lost sight of the wider picture and the benefits to both parties and that, if it is to make a decision which has the effect of closing down the facility of boating on the Serpentine, then it must do so for the right reasons.

35 I therefore grant the application to apply for judicial review that has been made.

36 The more difficult question relates to the application for interim relief. The way in which interim relief is sought is somewhat unusual in that it is provided in the draft order as a form of undertaking by the claimant; the order providing:

“And upon the Claimant undertaking, if the application is granted, to trade by providing boating services to members of the public in Hyde Park and Greenwich Park as if it was providing those services pursuant to the contract and, in particular, to pay such fees as would be due to the First Defendant as if the contract remained in force.”

37 In effect, this is the whole point of the application that has been made, namely that the claimant, BBL, should be allowed to resume its boating activities, in particular in Hyde Park, the Greenwich Park concession being relatively minor by comparison.

38 The problem, as I see it, is that to grant the interim relief in the form sought would be effectively to impose upon the defendant a contract, including contractual terms, which it is clear to me the defendant is not willing to contract to. With the expiry of the existing contract on 10 November, it seems to me that the way was open for the defendant to enter into a new interim contract on such beneficial commercial terms as it wished to, particularly in light of the evidence from Mr Buchanan that the existing terms, dating back, as they did, some fifteen years or so, to 2004, were effectively anachronistic and did not represent the

appropriate approach to such concessions in 2020 or 2021. Examples would be that experience had shown that terms would be desirable to allow, for example, the use of the jetty by school children for rowing and other activities which experience had shown were made difficult by the existing contractual arrangements. Also it would be perfectly legitimate for the defendant to reconsider whether the compensation to be paid to it for the concession was either in the appropriate percentage or whether it should be in a percentage at all, and whether the minimum amount to be paid was the appropriate amount given the significant and substantial profits which had been made in the past by BBL.

- 39 In those circumstances, it seems to me that it would be quite wrong for the court, by way of interim relief, to impose upon the parties contractual terms which had not been agreed by them. In my judgment, the answer is for the substantive application for judicial review to come before the court expeditiously and then for the court, in the light of the substantive application and the decision made, to take a view whether an order is appropriate which would force the defendant to allow the claimant to resume its boating activities to the benefit of the public and, arguably, both parties.
- 40 One of the reasons why I believe that it would be desirable to delay effectively the making of an interim order until the full application is heard is that this will give the defendant the opportunity to reflect on some of the matters which have been raised in this application and in this judgment and take a view whether it cannot see its way to taking an approach which will allow the resumption of this extremely beneficial activity, in particular in the summer season to come. Although the concession does remain open during the winter, not surprisingly, the uptake by the public and the revenue granted is relatively modest and the real impact of the closing of the boating would be felt in the coming summer season, from April, and I do regard it as significant that this is one of the activities which is allowed under the Tier 3 restrictions, indicating the benefit to the public which is considered by the Government to be derived from such activities. I would hope that the somewhat entrenched positions that have been taken in relation to this matter could be reconsidered and revisited and the parties come to an accommodation whereby an arrangement can be made which is contractually acceptable to both sides, allowing this activity to resume at some stage in the New Year.
- 41 On that basis, I grant the application for permission to claim judicial review but I do not grant the application for interim relief.
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ⁱ By the time of publication of this judgment, in January 2021, England had moved to Tier 4 restrictions which prohibit boating activities on the Serpentine