Case No: CO/4576/2014

Neutral Citation Number: [2015] EWHC 358 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday 19th February 2015

Before :

THE HONOURABLE MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN
on the application of

SILUS INVESTMENTS S.A.	**Claimant**
- and -	
LONDON BOROUGH OF HOUNSLOW	**Defendant**

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(Transcript of the Handed Down Judgment of
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Mr John Hobson QC and Mr Matthew Reed (instructed by **Fladgate LLP**) for the **Claimant**
Mr Richard Harwood QC (instructed by **Hounslow Council Legal Services**) for the **Defendant**

Hearing dates: 3 & 4 February 2015

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Judgment

Mrs Justice Lang:

1. The Claimant applies for judicial review of the Defendant's decision, dated 21 August 2014, to designate an area within its borough as a conservation area, known as the 'Chiswick High Road Conservation Area'.

2. The Claimant, which owns a public house in the conservation area, claims that the Defendant has impermissibly sought to prevent it from demolishing the public house by (a) breaching a legitimate expectation of consultation and acting in a procedurally unfair manner; (b) obtaining a decision on the basis of a misleading report; and (c) using the conservation area procedure for an improper purpose.

3. In response, the Defendant denies that it has acted unlawfully. The conservation area was designated because of the area's special historic and architectural interest. The decision was processed urgently because of the material harm which would be caused to the area by the Claimant's proposal to demolish the public house, which is a locally listed building. The procedure adopted was not, in all the circumstances, unfair and in any event, the Claimant has nothing to say on the merits of the designation.

4. Gilbart J. gave permission to apply for judicial review on 26 November 2014.

Facts

5. The Claimant, a company registered in Panama, is the owner of a public house, known as the Packhouse & Talbot, at 145 Chiswick High Road London W4. It has owned it since 21 August 2009 and leases it out.

6. The lease of the public house was renewed on 15 August 2014 for a period of 12 months. Clause 6.2 contains a break clause which provides that the Claimant can terminate the lease on 6 months notice if it wishes to implement a planning permission requiring demolition or other major works. It would be open to the Claimant and his tenant to enter into a separate agreement to terminate the lease sooner.

7. The public house has been a locally listed building since 1997 as a "fine example of Victorian public house exterior". The evidence indicates that there has been a coaching inn at that site, from at least the 17th century, although it was re-built in the early part of the 20th century.

8. The Defendant considered designating Chiswick High Road as a conservation area in 2001 and 2006, but other areas were prioritised ahead of it, and designation did not take place. In part, this was due to a lack of financial and staff resources within the Council. The Defendant's former Conservation Officer, Ms Urquhart, said she assessed and evidenced the historic and townscape value of the relevant area at a public inquiry in 2008-2009. The continuing aspiration to designate Chiswick High Road as a conservation area was discussed in emails between Ms Urquhart and local residents in 2013 and 2014.

9. On 3 October 2012, a pre-application meeting was held between the Defendant's officers and representatives of the Claimant to discuss the Claimant's proposals to demolish Nos. 145-147 and erect a mixed use, multi-storey redevelopment with town houses to the rear of the site at 12 Annandale Road. There is a factual dispute between the parties as to whether the Defendant's officers orally confirmed to the Claimant's representatives its intention to designate the area as a conservation area at this meeting.

10. The Defendant's subsequent written advice to the Claimant dated 19 October 2012 stated:

> "The site is not located within a conservation area at present, however the Packhorse & Talbot is a locally listed building."
>
> "Policy ENV-B.2.7 (Alterations to buildings of local townscape character) of the UDP states that alterations to locally listed buildings will need to be fully justified, showing why the works are desirable or necessary. … It is not considered that there is any justification for the demolition of the existing public house."

11. In the March 2014 version of the Defendant's 'Urban Character and Context Study', Chiswick High Road was identified as being of high design quality and sensitivity to change, and categorised as within the "heritage fringe", with heritage assets. Mr Doran and Ms Urquhart explained that "heritage fringe" was the term used to describe areas that had the potential to become conservation areas. A draft glossary, used by officers internally to define this work, dated December 2013 defined the term "heritage fringe" as "Areas on the fringe of a Conservation Area that have potential to become part of that Conservation Area. Potential designation of extension of [conservation area], or area of undesignated but locally special character". In July 2014, the term "heritage fringe" was replaced by the term "Area of Special Character" defined for the purposes of the draft Local Plan as "[a]n area of the borough which possesses sufficient architectural, townscape and environmental quality to make it of significant local value…" and specific criteria were then set out. The draft Local Plan was submitted to the Secretary of State on 20 August 2014.

12. On 6 August 2014, the Defendant received an 'Application for prior notification of proposed demolition' of the public house, dated 5 August 2014, from the Claimant's planning consultant, JB Planning Associates Ltd. It stated that the works were due to commence on 8 September 2014 and to be completed on 31 October 2014. The application was accompanied by a 'Method Statement for Demolition Works' dated 23 July 2014, without a commencement date, indicating that an asbestos survey would be carried out before any works commenced.

13. The Defendant was required to notify the Claimant whether prior approval was required of the method of demolition within 28 days following receipt of the application.

14. On 11 August 2014, the Defendant asked the Claimant's planning consultants to provide further information on the Claimant's intentions for the site. They indicated that they could not provide any additional information.

15. There was concern among Councillors and in the local community about the prospect of demolition of the public house, and requests for designation of the area as a conservation area.

16. On 15 August 2014, after a site visit accompanied by the Defendant's officers, English Heritage indicated in a brief email that they supported designation as a conservation area.

17. On 18 August 2014, Ms Marilyn Smith, Head of Development Management and Enforcement, informed Councillors of the proposal for designation as a conservation area.

18. On 19 August 2014, Ms Eaton, Principal Lawyer in the Council's Legal Services Litigation Team, advised that, subject to his agreement, the decision could be made by Councillor Curran, Leader of the Council, under section 9E Local Government Act 2000, and it could properly be deemed not to be a 'key' decision requiring 28 days advance notice to be given. On 21 August 2014, Mr Adams, temporarily acting as Chief Executive, agreed to a request from Ms Eaton to waive any possible 'Overview & Scrutiny' call in of the decision, so that it could take immediate effect. Councillor Curran was advised of the factual and legal position, and agreed to this decision-making procedure.

19. A consultation procedure commenced on 19 August 2014 when the Defendant emailed brief details of the proposal to local groups, including traders and residents associations, heritage bodies, local politicians and the local news website (Chiswick W4). The Defendant also posted details of the proposal and the consultation on its website in the news section. No documents explaining or justifying the proposal were attached to the notice of consultation, though a map of the proposed conservation area was available. The deadline for consultation responses was given as 27 August 2014. Chiswick W4 published the details, with additional comments, on its website on 20 August 2014.

20. The Defendant did not consider that it was under an obligation to consult land owners and occupiers individually. Mr Doran, a planning officer, said in his 1st witness statement, at paragraph 36, "[i]t would have been extremely difficult to contact every individual property and business owner within the proposed conservation area within the timescale". The Claimant was not formally notified of the proposal, or invited to respond to the consultation, because the Defendant feared that the Claimant would pre-empt any conservation area restrictions by demolishing the public house forthwith. However, the Defendant informed the operator of the public house and his brewery landlord of the proposal because Council officers had promised to do so at a site visit on 15 August.

21. Five responses to the consultation were received on 19 August, all in favour of the proposal.

22. On 21 August 2014, Ms Eaton and Mr Doran had a chance meeting with Ms Debarry, an employee of the Defendant who is also Councillor Curran's partner. She informed them that Councillor Curran would not be available the following week. Councillor Curran is not a full-time politician; he is in employment outside the Council. Later that day Ms Eaton asked Ms Debarry to take the relevant papers to Councillor Curran

at their home for him to consider. These documents (in particular, the proposed conservation area map and the officer's report) had already been sent to him by email.

23. On 21 August 2014, Councillor Curran made the following decision:

> "The area shown on the plan attached as Appendix A be designated as a conservation area to be known as the Chiswick High Road Conservation Area.
>
> Subject to the designation in 1 above, public consultation on a Conservation Area Character Statement to commence with a view to its adoption as a Conservation Area Character Appraisal and as supplementary planning guidance.
>
> The Director of Regeneration Economic Development and Environment be authorised to consider whether to enter into public consultation in respect of the withdrawal of other permitted development rights under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), to effect such consultation if considered appropriate."

24. The decision was published on the Council's website on 21 August 2014.

25. Ms Eaton subsequently learned that the information about Councillor Curran's availability which she had acted upon was in fact incorrect. Councillor Curran was available on 26 and 27 August, though not on 28 or 29 August.

26. The Defendant continued to receive consultation responses up to 27 August, all in favour of the proposal (though some critical of the Defendant), save for the Claimant's response.

27. On or about 7 August 2014, both a representative of the Claimant and its planning consultants, JB Planning, saw postings on the residents forum of the website Chiswick W4 opposing the demolition and discussing potential conservation area designation.

28. On 26 August, JB Planning saw a reference to the consultation period on the Chiswick W4 website. They searched the Defendant's website and found the notice regarding the consultation about the proposed conservation area.

29. On 27 August, JB Planning telephoned the Defendant asking for further information and they were sent the plan and two internal documents briefly setting out reasons and justification for the proposed designation.

30. On 27 August, JB Planning submitted written representations to the Defendant complaining that interested parties, including the Claimant, had been given inadequate notification of, and insufficient time for, consultation on the proposal. JB Planning objected to the proposed designation, without giving reasons, stating that there was insufficient information available on which to make a meaningful response. JB Planning offered to provide further comments if the Defendant provided more information, and more time in which to respond.

31. On 27 August 2014, the Defendant issued its decision on the Claimant's application. It stated:

> "… the proposal … was not lawful within the meaning of Section 196D of the Town and Country Planning Act 1990 for the following reason:
>
> The development does not comply with the terms of Schedule 2, Part 31, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended in 2013) as the works constitute relevant demolition for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area."

The law on designation of conservation areas

32. Section 69(1) and (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides:

> "(1) Every local planning authority—
>
> (a) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and
>
> (b) shall designate those areas as conservation areas.
>
> (2) It shall be the duty of a local planning authority from time to time to review the past exercise of functions under this section and to determine whether any parts or any further parts of their area should be designated as conservation areas; and, if they so determine, they shall designate those parts accordingly."

33. The Defendant is therefore under a duty to designate any area which it decides meets the statutory test and a duty to consider from time to time whether areas meet that test. No procedure is specified, and there is no statutory obligation to consult before making a decision. Designation is not subject to the development plan process.

34. The National Policy Planning Framework ("NPPF") gives guidance on conservations areas and heritage assets, in section 12 headed "Conserving and enhancing the historic environment". A conservation area comes within the definition of a 'designated heritage asset'. Locally listed buildings are a non-designated 'heritage asset'.

35. The Court will strike down a decision to designate if the desire to protect a building was the impetus for designating the conservation area and that the designation of a conservation area was simply a pretext to prevent the demolition of a specific building or if the "true reason" is to prevent the demolition of a building: *R. (on the application of Arndale Properties Ltd) v Worcester City Council* [2008] J.P.L. 1583, per Sullivan J. at [26] and [34].

36. While there is nothing wrong in the desire to protect a building being an impetus for the conservation area designation, it must not be the impetus: *Metro Construction Limited v London Borough of Barnet* [2009] EWHC 2956 (Admin) per Collins J. at [36].

37. The designation of conservation areas in urgent situations was considered by Ouseley J in *R (Trillium (Prime) Property GP Limited) v London Borough of Tower Hamlets* [2011] EWHC 146 (Admin). Mr Harwood QC helpfully distilled the following principles from the judgment:

i) the question for an authority on designation is whether the area is of special interest, including the contribution of individual buildings to that area, but of itself, the desire to protect an unlisted building would not be a proper purpose of designation [13 to 18, 20];

ii) a designation is not however unlawful because the process was prompted by a threat to demolish a particular building [20];

iii) a conservation area designation may be progressed on an urgent basis to protect a building which makes a contribution to the proposed conservation area [127 to 129];

iv) practice or promises may give rise to a legitimate expectation of consultation on conservation area designation [170 to 173];

v) however any such legitimate expectation would not be breached if consultation does not take place because the Council reasonably concludes that a real risk of material harm to the conservation area would arise, such as the risk of pre-emptive demolition of the building [175 to 177, 181-183];

vi) If an error had been made as to the timing of the decision, the Court would not order a quashing if the error made no difference to the outcome [186].

38. In *R (GRA Acquisition Limited) v Oxford City Council* [2015] EWHC 76 Ouseley J stated at [57]:

> "…The question is one of fact: did the Council reach its conclusion, regardless of what stimulated the thought in the first place, on the basis of the statutory criteria alone?"

39. Consequently the question for the authority is whether the area meets the statutory criterion. A desire to protect an unlisted building from demolition cannot justify a conservation area designation, but the existence of a particular building may contribute to the proposed area and a threat of demolition may prompt the taking of a decision whether to designate.

The law on demolition

40. The demolition of a building (subject to certain immaterial exceptions) is operational development requiring planning permission: sections 55 and 57, Town and Country Planning Act 1990. The permitted development rights for demolition are in Part 31 of

Schedule 2 of the General Permitted Development Order. Class A applies to the demolition of buildings and Class B to the whole or part of a gate, fence, wall or other means of enclosure. Under Class A the permitted development is:

> "Any building operation consisting of the demolition of a building."

41. Again subject to immaterial exceptions, before demolition can take place under Class A, an application has to be made to the local planning authority for a determination whether prior approval of the method of demolition and any proposed restoration of the site is required. Demolition may then proceed if prior approval is granted, notice is given that it is not required or on 'the expiry of 28 days from the applicant's giving of notice without the local planning authority determining whether prior approval is required or notifying the applicant of their determination': condition A.2(b)(v).

42. Notification of the local planning authority's decision within the period requires receipt or deemed receipt of the decision notice. Its despatch within the time limit is insufficient: see *Walsall Metropolitan Borough Council v Secretary of State for Communities and Local Government* [2012] EWHC 1756 (Admin), [2012] J.P.L. 1502.

43. Those permitted development rights do not apply in conservation areas: Class A, paragraph A.1. The demolition of buildings within conservation areas is "relevant demolition" which has to be authorised by the grant of planning permission by the local planning authority or Secretary of State. Demolition in conservation areas without planning permission is a criminal offence: section 196D of the Town and Country Planning Act 1990.

Improper purpose

44. The Claimant submits that the Defendant's decision to designate was motivated by the desire to prevent demolition of the public house. No active steps were taken to designate it prior to the Claimant's application for prior approval. The appraisal process was perfunctory, and proper consideration was not given to the statutory test for designation.

45. In my judgment, there was credible evidence that Chiswick High Road had been under consideration for designation as a conservation area for many years prior to 2014. I accept the Defendant's evidence that designation had not been progressed because other areas were prioritised, not because Chiswick High Road was unsuitable for designation. Probably as a result of being under-staffed, the Defendant's officers were not performing the duty to assess and review under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as effectively as they might have done.

46. The Defendant was spurred into action in August 2014 by the threat of demolition of the public house which was a locally listed building (an undesignated heritage asset for the purposes of the NPPF) which in its view made a positive contribution to the architectural and historical character of the area.

47. Officers of the Defendant and Councillor Curran were given correct legal advice by Ms Eaton to the effect that it was not lawful to designate a conservation area simply to preserve a building. There is no basis upon which to find that they disregarded that advice.

48. In my view, it is apparent from the terms of the officer's report recommending designation that the risk to the public house was not the reason for the designation, although it was acknowledged as a benefit. The statutory test for designation was clearly set out and the report applied the statutory criteria to the area as a whole, not just the public house. The report also cross-referenced to the very recent and detailed assessment of Chiswick High Road as an area of special character in the draft Local Plan.

49. Applying the principles in the decided cases cited above, I am satisfied that the Defendant did not designate the conservation area with the improper purpose of preventing the demolition of the public house.

Procedural unfairness

50. The Claimant submits that the Defendant's representation on its website that there would be a consultation on the proposed designation gave rise to a legitimate expectation to those affected, including the Claimant, that they would be consulted. The Defendant concedes that this submission is correct.

51. Where a public body decides to embark upon a consultation when it is not obliged to do so, it must nonetheless comply with the minimum standards of a lawful consultation procedure. These standards were succinctly expressed in *R v Brent London Borough Council ex parte Gunning* (1985) 84 LGR 168, based upon the submissions of Stephen Sedley QC, and approved by the Court of Appeal in *R v North and East Devon Health Authority ex parte Coughlan* [2001] 1 QB 213, per Lord Woolf MR at [108]:

> "To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is given."

52. These principles have recently been approved by the Supreme Court in *R (Stirling) v Haringey LBC* [2014] UKSC 56, [2014] 1 WLR 3947, per Lord Wilson at [25].

53. Despite Mr Harwood's eloquent submissions to the contrary, I have concluded that, on the evidence in this case, these minimum standards were not met.

54. First, the Defendant's consultation notice was not accompanied by "*sufficient reasons for particular proposals to give intelligent consideration and an intelligent response*". The summary posted on its website and the details given in the email letters to consultees were too brief and superficial to provide for a meaningful consultation.

The Claimant's planning consultants were sent, on request, some limited further information, but only on 27 August, the final day of the consultation period.

55. Second, the 7 day period from 19 to 27 August 2014 was too short, especially during a period of the year when many people are away (it included the Bank Holiday weekend), and when there had been no advance warning of the proposal. As landowners and occupiers were not notified directly, the efficacy of the consultation was contingent upon the news spreading by word of mouth and through local associations, websites etc. In my view, 7 days was too short a period for that mode of consultation to work fairly or effectively.

56. I accept that the Defendant had reasonable grounds to believe that the Claimant would commence demolition on 8 September, as stated in its application form, and the Claimant declined to give the Defendant any assurances that it did not intend to start work on or around that date. But even if the 7 day period was justified by reason of the need to make a decision before the demolition could take place, the decision to curtail the consultation period to 2 days, and to make the decision on 21 August, without informing anyone, could not be justified, for the reasons I set out below.

57. Third, the product of the consultation was not "*conscientiously taken into account*" when the decision was made, because the decision was made before all the consultation responses had been received. Plainly, the Claimant's representations were not taken into account by Councillor Curran.

58. The Defendant submits that it was entitled to resile from the promise of a 7 day consultation because of the exceptional circumstances. Any decision to resile from a legitimate expectation of consultation has to be scrutinised to judge the adequacy of the reason advanced for the change, taking into account what fairness requires (*R v North and East Devon Health Authority, ex parte Coughlan* [2001] 1 QB 213, at [57]).

59. In *Trillium*, Ouseley J held at [176] that, when a decision was taken to resile from a consultation as to designation in the light of a purported risk of demolition of a heritage asset, "*the question is whether the Council, considering the material factors, did have reasonable grounds for believing that pre-emptive demolition was a risk of such a degree that it warranted this particular route to designation, with the matter going to Cabinet a month earlier than intended, and without consultation*."

60. According to the Defendant, the legitimate reason for the curtailment of the consultation period was that Ms Eaton believed that Councillor Curran would not be available in the last week of August to make the decision. If it was postponed until the following week, there was a risk that the Defendant's decision on the Claimant's application would not be served on the Claimant within the 28 day time limit, so as to restrict his right to demolish the public house. The 28 day period would expire on 3 September.

61. In my view, Councillor Curran could have made the decision at any time from close of business on 27 August to 2 September. The Claimant's application form indicated that service could have been effected on its agents, JB Planning, based in Hertfordshire and the company address given on the form (Kerman & Co. LLP, 200

Strand, London WC2). The Claimant had not previously flouted planning controls, and there was no reason to assume it would seek to evade service.

62. I consider that it was insufficient to rely on a casual conversation with Councillor Curran's partner to ascertain his availability. The information obtained from his partner was in fact incorrect. He was available on 26 and 27 August, though apparently not available on 28 and 29 August. No evidence has been adduced to say that he was unavailable between 30 August and 2 September. It would be reasonable to expect Councillor Curran to make time available in the evenings or over the weekend if necessary since the Defendant viewed this matter as important and urgent.

63. I also accept the Claimant's submission that, if Councillor Curran was genuinely unavailable, another member of Cabinet could have been asked to make the decision instead. Whilst Councillor Curran had responsibility for planning, the issues were not so complex or specialist that they were beyond the reach of other Cabinet members, all of whom would be experienced Councillors.

64. In my judgment, the curtailment of the consultation period was not justified, on the facts of this case, and it resulted in unfairness.

Misleading officer's report

65. The Claimant alleges that the officer's report recommending designation was misleading because it did not notify Councillor Curran that:

    i) The last formal consultation had been undertaken in 2006;

    ii) That a 7 day consultation had commenced on 19 August 2014 and was not due to conclude until 27 August 2014;

    iii) That the Claimant and other landowners in the area had not been directly consulted.

66. In my judgment, Councillor Curran ought to have been informed of these matters, in particular that the consultation period was being curtailed, to enable him to decide whether or not he should go ahead and make the decision in those circumstances.

Discretion to refuse relief

67. The Defendant submits that the Claimant was not prejudiced by these procedural failings because it has nothing to say on the merits of the designation decision and its representations would have made no difference to the outcome. It has not at any stage put forward any reasons why the area does not meet the statutory test for designation as a conservation area.

68. In *R v Chief Constable of the Thames Valley Police ex parte Cotton* [1990] IRLR 344, Bingham LJ (as he then was) gave six reasons why the court ought not to refuse relief when a party has been denied the opportunity to put his case:

> "While cases may no doubt arise in which it can properly be held that denying that subject of a decision an adequate opportunity to put his case is not in all the circumstances unfair, I would expect these cases to be of great rarity. There are a number of reasons for this:
>
> (1) Unless the subject of the decision has had an opportunity to put his case it may not be easy to know what case he could or would have put if he had had a chance.
>
> (2) As memorably pointed out by Megarry J in *John v Rees* [1970] Ch 345 at 402, experience shows that that which is confidently expected is by no means always that which happens.
>
> (3) It is generally desirable that decision-makers should be reasonably receptive to argument, and it would therefore be unfortunate if the complainant's position became weaker as the decision-maker's mind became more closed.
>
> (4) In considering whether the complaint's representations would have made any difference to the outcome the court may unconsciously stray from its proper province of reviewing the propriety of the decision process into the forbidden territory of evaluating the substantial merits of a decision.
>
> (5) This is a field in which appearances are generally thought to matter.
>
> (6) Where a decision-maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not to be lightly denied…"

69. Although Mr Cotton's right to be heard arose out of his dismissal from the police, I consider that similar considerations apply here where the Claimant has been deprived of the opportunity to be consulted as result of serious procedural failings.

70. If a proper procedure had been followed, the Claimant would have had the opportunity to make a reasoned objection to the Defendant's recommendation for designation. It had instructed professional planning consultants who informed the Defendant of the wish to respond in more detail. I am unable to conclude that the planning consultants would have had nothing to say in opposition to the designation proposal, if the Defendant had provided sufficient information about its proposal and allowed enough time for a meaningful response. It would not be proper for me to act on the assumption that their representations would have made no difference to the outcome. This would be tantamount to accepting that the Defendant had a closed

mind and would not have had regard to their representations. That would defeat the very purpose of a consultation procedure.

71. At the hearing, I expressed my concerns about a pre-emptive demolition of the public house by the Claimant if the decision was quashed. The Defendant offered to embark upon a full appraisal and consultation process and re-make the decision, whilst maintaining the current designation decision. However, I accept Mr Hobson's submission that there is too great a risk that neither the Defendant, nor those consulted, would engage in the process with a genuinely open mind if the Court refused to quash the unlawful decision.

72. The Claimant has confirmed that it will give an undertaking to the Court not to commence any demolition works at the public house, nor to apply for prior approval of the method of demolition, for 6 months from the date of the order.

73. The Claimant has also confirmed that it will enter into a unilateral undertaking with the Defendant under section 106 Town and Country Planning Act 1990 (to be registered as a local land charge) not to commence any demolition works at the public house, nor apply for prior approval of the method of demolition, for 6 months from the date of the order.

74. These undertakings are intended to enable the Defendant to consider whether to exercise its duties under section 69 Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of Chiswick High Road, and conduct a fresh decision-making process, if it considers it appropriate to do so. Once the undertakings are in place, the Defendant's decision will be quashed.

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