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CO/8167/2008

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 7th October 2009

B e f o r e:

FRANCES PATTERSON QC
(Sitting as a Deputy High Court Judge)
Between:
THE QUEEN ON THE APPLICATION OF
THE RIVER CLUB

Claimant

v

(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2) ROYAL BOROUGH OF KINGSTON UPON THAMES

Defendants

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(Official Shorthand Writers to the Court)

Stephen Whale (instructed by Seddons Solicitors) appeared on behalf of the **Claimant**
Katherine Olley (instructed by the Treasury Solicitor) appeared on behalf of the **First Defendant**

J U D G M E N T
(Approved by the court)

1. THE DEPUTY HIGH COURT JUDGE: This is an application under Section 288 of Town and Country Planning Act 1990 to quash a decision of an Inspector appointed by the first defendant dismissing the claimant's appeal against a decision of the second defendant refusing planning permission for the alteration and retention of a fitness studio at the River Club, Old Malden Lane, Worcester Park, Surrey.

Background

2. On 4th June 2007 the claimant had submitted a detailed planning application to the second defendant for the alteration and retention of a fitness studio, involving a reduced length and addition of a pitched roof. The application was accompanied by various documents, including a planning, design and access statement prepared by WS Planning, planning consultants to the applicant.

3. That document described the physical location of the site within an area of metropolitan open land and an area of archaeological importance. It assessed the proposal against PPS1: Delivering Sustainable Development, and against development plan policy. Within that assessment it referred to Policy OL4 of the Royal Borough of Kingston Unitary Development Plan First Alteration and Policy RL2.

4. Because Policy OL4 does not permit development within the metropolitan open land except in very special circumstances, unless the development is within certain categories, which the fitness studio was not, the appraisal of factors relied upon by the claimant was said to constitute very special circumstances. Prime amongst those circumstances was the growth in membership since the fitness studio was built, and financial consequences of that increase. It was contended that the River Club would fail without the fitness studio, and that the River Club members would have to seek alternative fitness studios within a 15-minute drive of the River Club. A list of 17 other establishments was set out.

5. The fitness studio was erected in 2005 without the benefit of planning permission. A retrospective planning permission was made in 2005 to retain the fitness studio. That was refused by the Development Control Committee of the second defendant for a variety of reasons, including that the development was inappropriate development in the metropolitan open land; failed to safeguard the openness of the area, contrary to Policy OL4 of the Royal Borough of Kingston Unitary Development Plan First Alteration; and that the proposal represented intensification of use of the site in an unsustainable out-of-centre location, contrary to Policies RL2 and RL5 of Royal Borough of Kingston Unitary Development Plan.

6. The Committee authorised the serving of an enforcement notice to secure the removal of the fitness studio. The notice was served and an appeal against it made on grounds brought under section 174(2)(a) and (f) of the Town and Country Planning Act 1990.

7. In a decision letter dated 2nd May 2007 that appeal was dismissed and the enforcement notice upheld to take effect on 2nd November 2007. By that time the application, which has eventually resulted in this appeal, had been made. The planning application

was reported to the Development Control Committee on 3rd October 2007, when the Committee resolved, in accordance with the officer's recommendation, to refuse the application.

8. The refusal was for three reasons, two of which are relevant for current purposes. They are, and I summarise, firstly, that the proposal was contrary to policies within the metropolitan open land and, secondly, that the proposal was in an unsustainable location.

9. Before the application was determined, the claimant had submitted, as late information, attached to a letter of 5th September 2007, an update on the very special circumstances where the claimant relied upon, firstly, compliance with the previous Inspector's comments; secondly, intended use of the fitness studio; and, thirdly, financial viability of the club. As is apparent, the Committee did not accept that the matters the claimant relied upon constituted very special circumstances.

10. The claimant appealed the decision on the part of the second defendant. In a decision letter dated 23rd July 2008, that appeal was dismissed.

The decision letter

11. The Inspector defined the main issues in paragraph 4:

> "It is accepted that the proposal would constitute inappropriate development within metropolitan open land, and so the first main issue is whether there are other material considerations clearly sufficient to outweigh that harm and any other harm, thereby justifying the proposal on the basis of very special circumstances. The other main issues are the effect of the proposal on the character and appearance of the area and on the demand for more or less sustainable forms of transport. I deal with these in reverse order."

12. The first and third of those issues have been the subject of challenge in these proceedings. The Inspector was satisfied that the proposal would not cause harm to the character and appearance of the area.

13. The Inspector dealt, firstly, with the issue of sustainable transport:

> "5. In floorspace terms, the proposal would represent a minor addition to the club but its impact in terms of membership would be different. There is evidence that the existing, unauthorised fitness studio has led to a 70 per cent increase in the membership of the club and it can be expected that its replacement would retain the same effect. Figures given in evidence suggest that as much as 20 per cent of the club's membership belong solely because of the existing fitness studio. So it is reasonable to deduce that the proposed fitness studio would represent a similar major improvement to the facilities the club would otherwise offer.

> 6. The Council's policy, RL2 in the Royal Borough of Kingston upon Thames Unitary Development Plan First Alteration (the UDP), requires major improvement proposals to indoor sports and leisure facilities not located within the town centres to have good public transport accessibility. By London standards, the River Club is situated in a remote location, within the lowest category of accessibility by public transport.
>
> ...
>
> 9. Policy RL2 is referred to in the first paragraph of the previous appeal decision. There is nothing in that decision which would divert me from the conclusion I reach which is that the proposal would be harmful in terms of its reliance on less sustainable forms of transport. It would therefore be contrary to UDP Policy RL2."

14. On "very special circumstances" the Inspector identified harm by reason of inappropriateness in the MOL by the footprint of the proposal. That was 113.8 square metres, or about 14.7 per cent of the existing River Club, already an extensive complex. To that harm, he added the harm caused by the reliance on less sustainable means of transport that he identified. He then set out the very special circumstances relied upon by the claimant in paragraph 16.

15. In relation to those, he dealt with the position concerning the alleged removal of harm to the character and appearance of the MOL in paragraph 17 of his decision letter. He dealt with the multifunctional use accepted as a benefit, albeit not "special", and he examined the physical relationship of the studio with the existing club, and concluded, in paragraph 19:

> "Other extensions to the club have a transparent conservatory-like construction which allows the users to commune with the open land visually if not physically. This gives an experience which is in some way special, attested by the many letters in support of the club expressing the view that the beautiful surroundings make the club unique. In contrast, the studio would have a relationship with the open land around limited to two doors and a window onto a lawn which is occasionally used for outdoor exercise. It would otherwise be an entirely internal space. Moreover, it would complete the physical separation of the tennis courts from the lawn and add to the latter's sense of isolation from the rest of the club, which I observed on my visit. In consequence, the form of the proposal would not only fail to share the special experience of the rest of the club but would tend to compromise the club's existing relationship with the open land."

16. On financial viability, the Inspector said:

> "20. I have no doubt that the fitness studio is of great importance to the

> financial viability of the club, though it seems that it would remain marginal even if this appeal were allowed. I could see that there is little or no possibility of accommodating the fitness studio within the existing, authorised development on site. Even if nearby, unused buildings within the MOL cannot be acquired by the club for the purpose, there is no information to demonstrate that other forms of development, adding floorspace but not involving additional footprint could not be devised to accommodate an expansion of the club, so I do not believe that the demise of the club would be an inevitable result of dismissing this appeal."

17. Even if the club did close, the Inspector found in paragraph 21 that there were many other health and fitness clubs nearby to which members and employees could turn for similar benefits. He continued in that paragraph:

> "Although the experience of indoor exercise in conservatory-like buildings giving a view of beautiful surroundings is special to a degree, the continued existence of the River Club does not amount to the very special circumstances sufficient to overcome the harm which has been identified."

18. In paragraph 23 the Inspector referred to the additional information that had been supplied by the claimant to overcome the findings of the previous Inspector. That contained the following:

> "These pieces of additional information address the failings of the evidence in the previous appeal but it is a mistake to draw the inference that as a result very special circumstances have been established or even that these matters are alone capable of amounting to very special circumstances. That is not stated in the previous appeal decision. What is stated is the Inspector's belief that the matters put forward did not amount to very special circumstances sufficient to outweigh the permanent harm to MOL that would result from the proposal. That remains my opinion also, in respect of the present appeal, even though the matters claimed are now more quantified."

19. In paragraph 24 the Inspector said:

> "I therefore conclude that there are no very special circumstances sufficient to outweigh the harm to the MOL and the other harm which I have identified. The proposal is therefore contrary to UDP Policies STR7 and OL4."

The challenge

20. The challenge has been brought on two grounds:

Ground 1: PPG2 challenge

21. The claimant submits, firstly, that the words "and any other harm" that appear in paragraph 3.2 of PPG2 are restricted so that the additional harm must be to the green belt and to either the purposes of the green belt or the objectives, as set out in paragraphs 1.4 and 1.5 of the PPG respectively. As a matter of law, therefore, "any other harm" is constrained to green belt harm. Secondly, if it is correct, as a matter of law, to allow reference to sustainability as part of the harm, then it was not rational to do so in the circumstances of the instant case. Thirdly, the Inspector took a flawed approach to his analysis of very special circumstances and failed to follow the decision of R (Wychavon District Council) v Secretary of State for Communities and Local Government and others [2008] EWCA Civ 692. I take each of those points in turn.

22. First, PPG2, paragraph 3.2 reads:

> "Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development."

23. There is no definition or guidance as to the meaning of the phrase "and any other harm" in the PPG. More surprisingly, both counsel inform me that there was no decided case on the meaning of the phrase.

24. I was referred to the case of Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] EWHC 808 (Admin), a decision of Sullivan J. That was a case where the council challenged a decision on the part of the Secretary of State to grant planning permission for the stationing of a mobile home, construction of a septic tank and laying hardcore for domestic use in the green belt. Sullivan J looked at the approach taken by the Inspector in that case from paragraph 68:

> "68.In paragraph 15 of the present decision letter the Inspector did not state in terms that there were very special circumstances which justified permitting inappropriate development in the Green Belt. The decision letter has to be read as a whole and if this was the only point of criticism I would have accepted Mr Litton's submission that since this was the test posed in paragraph 3 it would be unrealistic to assume that it was not still in the Inspector's mind in paragraph 15 of the decision letter. However, it is very important that full weight is given to the proposition that inappropriate development is by definition harmful to the Green Belt. That policy is a reflection of the fact that there may be many applications in the Green Belt where the proposal would be relatively inconspicuous or have a limited effect on the openness of the Green Belt, but if such

arguments were to be repeated the cumulative effect of many permissions would destroy the very qualities which underlie Green Belt designation. Hence the importance of recognising at all times that inappropriate development is by definition harmful, and then going on to consider whether there will be additional harm by reason of such matters as loss of openness and impact on the function of the Green Belt.

69. I acknowledge that the Inspector in paragraph 12 recognised that a gypsy caravan site, as inappropriate development, would in itself cause harm to the Green Belt, and said that further harm would be caused by the impact (albeit limited) on the openness of the Green Belt and the countryside. But this approach is to be contrasted with the test posed in the last sentences of paragraph 15:

> 'On balance, the benefit to the appellant's family and particularly to the children of allowing the appeals outweigh the limited harm caused to the openness and purpose of the green belt.'

70. When striking the all-important balance, the Inspector appears to have approached the matter on the basis that because there was only limited harm caused to the openness and purpose of the Green Belt, this could be outweighed by the children's educational needs, even though he did not suggest that these needs were in the least unusual. Such an approach to the Green Belt balancing exercise diminishes the weight which should properly be attributed to Green Belt policy. Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the <u>further</u> harm albeit limited, caused to the openness and purpose of the Green Belt, was <u>clearly</u> outweighed by the benefit to the appellant's family and particularly to the children so as to amount to <u>very</u> special circumstances justifying an exception to Green Belt policy (my emphasis)."

25. It was submitted that "further harm" there was identified as relating to the green belt, and that is consistent with the claimant's submission on the interpretation of paragraph 3.2 of PPG2. It did not support the use of "lack of sustainable transport" as being further harm to be added to the harm to the green belt. Miss Olley, on behalf of the Secretary of State, submitted that "any other harm" was not constrained to green belt purposes or objectives. In essence, her submission was that the phrase was to be given its plain and ordinary meaning.

26. Paragraph 3.2 of PPG2 is within the section of the PPG entitled "Control over development" and, within that part, subheaded "Presumption against inappropriate development". In my judgement, paragraph 3.2 is dealing with what is required to

make inappropriate development acceptable in the green belt. That means considering the development as a whole to evaluate the harm that flows from it being inappropriate, together with any other harm that the development may cause, to enable a clear identification of harm against which the benefits of the development can be weighed so as to be able to conclude whether very special circumstances exist so as to warrant grant of planning permission.

27. It is of note that there are no qualifying words within paragraph 3.2 in relation to the phrase "and any other harm". Inappropriate development, by definition, causes harm to the purposes of the green belt and may cause harm to the objectives of the green belt also. "Any other harm" must therefore refer to some other harm than that which is caused through the development being inappropriate. It can refer to harm in the green belt context, therefore, but need not necessarily do so. Accordingly, I hold that "any other harm" in paragraph 3.2 is to be given its plain and ordinary meaning and refers to harm which is identified and which is additional to harm caused through the development being inappropriate. It follows that I reject the argument that the phrase is constrained and applies to harm to the green belt only.

28. Second, as a result, I have to consider whether it was rational on the part of the Inspector to refer to harm from the lack of sustainable transport provision as he did in paragraph 5 of his decision. The claimant submitted that the local authority case on "any other harm" evolved during the public inquiry, but at no stage included reference to sustainability as "any other harm". That may well be the case. The Inspector, though, had identified three main issues in paragraph 4 of his decision letter. He determined that relating to the demand for more or less sustainable forms of transport, first, and concluded that the use of the site as proposed would be harmful in terms of its reliance on less sustainable forms of transport. When he came to carry out the balancing exercise, as he was obliged to do, to be able to determine whether the appellant had established very special circumstances, it was incumbent upon him to, firstly, set out the harm that would flow from the development. It follows that far from it being irrational or unreasonable to consider sustainability as part of that exercise, he had to do so. Only then would he be able to correctly measure whether very special circumstances were sufficient to outweigh that harm.

29. Thirdly, whether the Inspector took a flawed approach to his analysis of very special circumstances, and whether he failed to follow the decision of the Court of Appeal in Wychavon, which was not only cited to the Inspector by both parties at the inquiry, but a copy of which was handed to him. In particular, it was submitted that a qualitative judgement as to the weight to be given to the particular very special circumstances needed had to be carried out by the Inspector. Further, my attention was drawn to paragraph 35 of the judgment of Carnwath LJ, where, in considering the Inspector's application of the test in the case before him, he made the point that the Inspector was careful to spell out in detail the relative weight that he gave to the different factors. That was in contrast to the exercise carried out in the decision letter under challenge.

30. The claimant accepts that in paragraph 16 of the decision letter the Inspector correctly sets out the individual circumstances relied upon by the claimant as constituting very special circumstances. The complaint is that, although they are dealt with individually,

nowhere in the decision letter are they dealt with as a package, which is how they were presented to the Inspector, and nowhere does the Inspector refer to the weight to be attributed to each.

31. I reject the submission that the Inspector has to attribute quantified weight to each circumstance. I do not regard Wychavon as setting that approach out as one always to be followed as a matter of law. There has to be a careful evaluation of the factors relied upon, individually and together, if it is contended that the circumstances are part of a package which, together, would amount to very special circumstances, but that does not extend to giving inspectors a straitjacket of having to quantify the weight to be given to each circumstance.

32. That leaves the question of whether the Inspector addressed whether the circumstances, put forward together as a package, amounted to very special circumstances. I bear in mind that one is not construing a decision letter as a statute or an examination paper, and I bear in mind that the decision letter is addressed to parties familiar with the arguments. Even so, I am unable to find where in this decision letter the Inspector has dealt with the cumulative position of very special circumstances.

33. In paragraph 24 of the decision letter the Inspector sets out his overall conclusion, but that is directly linked, in his analysis, to the individual circumstances which had preceded it.

34. I find, therefore, that the Inspector erred in his approach in this case to very special circumstances.

Ground 2

35. The claimant put the emphasis in oral argument on the issue of fairness. It was submitted that safety was a new argument. It was further submitted that safety was not the same as sustainability. As such, it was not identified as a main issue and the claimant should have had an opportunity to deal with it. In argument, the claimant accepted that there was only something in that submission if safety was in fact separate from sustainability. As the defendant submitted by way of example, if it was not safe to cycle that would lead to a greater use of less sustainable modes of transport.

36. In my judgement there is, in the context of this appeal, an overlap and interrelationship between the two concepts of safety and sustainability. It follows that this submission fails.

37. It was further submitted that in respect of the travel plan the Inspector raised issues that should have been raised at the public inquiry, and that the claimant should have been given an opportunity to comment. What the Inspector was doing in paragraph 8 of his decision letter was comparing a situation on the ground that he saw on his site inspection with the contents of the extant travel plan approved under an earlier concept. As a consequence, he concluded that any increase in activity at the club was not acceptable unless reassuringly safe and direct access for pedestrians to public transport facilities and for cyclists could be achieved. Although the parties had agreed a

condition which provided for a further travel plan, the Inspector was entitled, as a matter of his planning judgement, to assess whether the site was sustainably located and he was able to do so on the basis of the evidence and his site visit without reverting to the parties, who were both aware that sustainability was one of the three main issues.

38. The second part of Ground 2 concerned Policy RL2. This was not presented in oral argument before me, but maintained as a challenge based upon submissions set out in the skeleton argument. The claimant submitted, firstly, that the Inspector erred in applying RL2 to the appeal proposals, and, secondly, if RL2 did apply, the Inspector erred in that he failed to apply it properly.

39. Policy RL2 of the Royal Borough of Kingston Unitary Development Plan says:

> "The Council supports the development or improvement of indoor sports, leisure, cultural, heritage and entertainment facilities in Kingston town centre or the district centres and will seek to direct new leisure and recreation development to these areas. Major proposals for developing or improving indoor sports leisure, cultural, heritage or entertainment facilities outside Kingston town or the district centres will only be permitted where the applicants have demonstrated that:
>
> (a) there is sufficient need for the development; and
>
> (b) there are no suitable sites in Kingston town or the district centres. In addition, if the proposal is located 'out of centre', the applicants will need to demonstrate that there are no suitable alternative 'edge-of-centre' sites and that the site has good public transport accessibility. For all indoor recreation and leisure applications consideration will be given to:
>
> i) the potential for dual use by school children and the wider community; and
>
> ii) local amenity, traffic and environmental impacts as expressed through other policies in the plan."

40. It applies not just to major proposals, as the claimant submits, but even if it did, given the increase in activity that would flow from the fitness club, it was not unreasonable for the Inspector to conclude that the proposal was major. There is no definition of what is a major proposal within the Unitary Development Plan, and it follows that it is therefore a matter for the Inspector and his interpretation. The interpretation that the Inspector made in the circumstances of the current case was clearly one that was capable of coming within the terms of the policy. I therefore reject the submission that the Inspector erred in applying Policy RL2.

41. Dealing with the second facet, which is that the Inspector had failed to apply the policy properly, in terms of its application, Policy RL2 is clear: it is for the applicant to show that the terms of the policy are satisfied. There has been no evidence to demonstrate

that the claimant put evidence forward to that effect. The Inspector took into account dual use of the facilities, as is reflected in the decision letter.

42. As to the other effects on local amenity, traffic and environmental impact, there appears to have been no real evidence before the Inspector. It is impossible, therefore, to regard the Inspector as being in error in the approach that he took to the application of that policy. It follows that Ground 2 fails.

43. Do you wish to address me?

44. MR WHALE: Well, my Lady, unless I am very much mistaken, we have won.

45. THE DEPUTY HIGH COURT JUDGE: On very slender ground, Mr Whale, you have.

46. MR WHALE: It would follow from that, in my submission, that the order ought to be simply that the appeal decision is quashed and then we have the issue of costs. I know that my instructing solicitor and Treasury Solicitor have spoken about this. I do not know if my learned friend has been privy to the discussions, but, as I understand the agreement, because of the cost award in the club's favour, as against the local authority, which has not yet been resolved, and because there are issues between the parties in these proceedings as to costs which have not yet been ironed out, but perhaps could be, I understand the agreement simply to be that the Secretary of State is to pay the claimant's costs, subject to detailed assessment if not agreed.

47. THE DEPUTY HIGH COURT JUDGE: I will just hear Miss Olley on that, because obviously I am conscious that you have got home but this was squeaked home.

48. MISS OLLEY: Thank you, my Lady. As I understand the agreement, had your Ladyship found in the Secretary of State's favour, our costs were agreed. We were seeking very modest --

49. THE DEPUTY HIGH COURT JUDGE: Yes, I have your schedule, but I do not have anything from Mr Whale's client.

50. MISS OLLEY: The claimant's costs are approaching £19,000. There are a large number of points which the Secretary of State would take, in any case, in relation to the schedule. So, on that basis, I think it would have to go to a detailed assessment in some capacity. However, I would ask your Ladyship to order, in any event, that, whatever the costs come out at when they have been detailed assessed, that they should be a maximum of 25 per cent or one-third paid by the Treasury Solicitor, on the basis that, as your Ladyship has confirmed, they did win on a very slender ground and some of the points were not even pursued orally.

51. THE DEPUTY HIGH COURT JUDGE: You obviously had a different understanding, Mr Whale, so I think it is fair that I give you the opportunity to respond.

52. MR WHALE: Yes, I did. Just in terms of principle, whilst obviously you have a discretion to award a third, two-thirds --

53. THE DEPUTY HIGH COURT JUDGE: I do.

54. MR WHALE: -- or whatever it may be, that, in my submission, is more conducive to what one might call ordinary civil litigation matters. In Administrative Court proceedings my experience, both from this side of the room and the other side of the room, [is that] if there are a number of grounds but one succeeds, very much the ordinary course of events is that costs follow the event without the kind of discount principle that my learned friend is alluding to. So I say that it matters not that it was a slender matter; what matters at the end of the day is the outcome. All we wanted was a quashing and that is what we got.

55. Detailed assessment — that appears to be common ground for various reasons. As I say, it may be that costs can be agreed without in fact the need for that further detailed assessment. So I repeat the proposition: the Secretary of State pays the claimant's costs. Detailed assessment if not agreed. That is it.

56. THE DEPUTY HIGH COURT JUDGE: Thank you very much.

57. MISS OLLEY: I would briefly beg to differ, that no account is taken in this court of the number of grounds that were and the number of grounds on which there was success.

58. THE DEPUTY HIGH COURT JUDGE: Yes, thank you very much, Miss Olley.

59. It seems to me, in relation to costs, that the Secretary of State should pay the claimant's costs, not to exceed 40 per cent of those costs. If the costs are not agreed, then they are to go off to detailed assessment, as has been agreed between the parties.

60. Thank you both very much.

61. Is there anything else?

62. MR WHALE: Yes, there is, my Lady. I am very grateful. Just one other matter. I know that the shorthand writers have a difficult enough job as it, but I wonder if we could have an expedited transcript. The reason I ask for that in this instance is two-fold. The matter will now go back to the Secretary of State. Ordinarily, another inquiry will be convened. I do not know quite when that will be, but your judgment may shape the future in that regard.

63. The second point is that there is still an extant enforcement notice against my client. Kingston are represented here today through Mr Colin (?), as I learnt just after lunch. The transcript may have a bearing. It may shape Kingston's decision as to what it does or does not do next. So for those two reasons could I ask, please, for that expedition?

64. THE DEPUTY HIGH COURT JUDGE: You can certainly ask, Mr Whale.

65. MR WHALE: May I have it?

66. THE DEPUTY HIGH COURT JUDGE: I think the problem is the shorthand writers are under a lot of pressure, in terms of getting the transcripts out, and it seems to me that in terms of any remittance to the Secretary of State, time is not going to be of the essence in relation to getting the transcript. So your client is more than adequately catered for in that regard.

67. In relation to the Borough of Kingston, I am sure they will not take any precipitant action before receipt of the transcript, in any event. It seems to me that that secures your client's interests.

68. MR WHALE: That is certainly of some comfort. I am grateful.

69. THE DEPUTY HIGH COURT JUDGE: Thank you both.