

PUBLIC INQUIRY 2019
REFERENCE: APP/X5210/C/18/3193167
SOUTH FAIRGROUND (BREN COTTAGE) VALE OF HEALTH.
NW3 1AS

LPA: CAMDEN ENFORCEMENT NOTICE: EN17/1284

APPELLANT: JITA LUKKA

DATE: 6th NOVEMBER 2018

STATEMENT OF RESPONSE OF APPELLANT

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APPELLANT'S RESPONSE TO LPA'S STATEMENTS OF CASE AND CITY OF LONDON'S SUBMISSIONS

1. The overtures of the LPA inter alia at 4.9 of their Statement of Case do not carry conviction. The plain reality is that the LPA turned a blind eye to the entirety of the unlawful activities which were taking place between 2005 and 2017. By their own admission they concede that no inspection of the site was carried out until 2017. The consequence of this dereliction of duty engendered a situation in which Mr Litvai had lived on the site for some twelve years and most certainly lived continuously in the structure refurbished by the appellant from August 2013 onwards.

2. There was no abandonment of the C3 Use brought about by Mr Litvai's continuous residential occupation of his home for well in excess of the requisite four years to achieve immunity from enforcement under Section 171 (b) 2 TCPA 1990 as amended by The Planning and Compensation Act 1991 implementing the recommendations of the Carnwath Report. Mr Litvai left the site in January 2017 and the appellant completed her purchase of the site on 29 March 2017 and immediately moved into Mr Litvai's house by attaching a caravan to it whilst she proceeded to effect the refurbishment. Once the refurbishment was finished she wrote to the LPA and informed them that the caravan had been disconnected from the house. Between the time Mr Litvai left and the appellant completed her purchase one wall of the house had been ransacked.

3. The substantial structure built by Mr Litvai is confirmed by the evidence of Mr Tony Covey the appellant's architect. His evidence conveys also the extent of the refurbishment work effected. The permanence of the structure built and continuity of its residential use is further corroborated as follows: -

A. The video evidence of the structure provided by the videos and photos December 2016. Contrary to the assertions of the LPA the structure did appear on the Cadmap Plan and the photos taken of the site were in fact those of the appellant.

B. The comment from Mrs Joan Burstein CBE who lives in the penthouse apartment of Spencer House looking directly down on the South Fairground site. The one person who could see precisely that which was taking place.

C. The article in the Camden New Journal deposing to the length of time Mr Litvai had lived there and showing the house he lived in.

D. The correspondence supporting Mr Litvai at the time of his eviction.

E. The comments lodged by Laura Solomons

F. The comments lodged by Caroline and Keith Hammond.

G. Mr Litvai's statement to Tony Covey that he had lived there continuously .

H. The evidence of Chris Cox that the image of the house, the subject of this appeal, had been there from at least 2013.

4. The speculative nature of the specious arguments advanced by the LPA were demanded by necessity since unlike the position of Mrs Joan Burstein CBE the Council had no idea as to the extent of the unlawful operations obtaining.

5. The submissions of the City of London's Corporate Lawyer further demonstrate the deeply flawed approach which has been taken. They advance the Skerritts of Nottingham Case as supporting their submissions. The reality is quite otherwise: -

SKERRITTS OF NOTTINGHAM LTD V SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS (NO.2) [2000] = Erected a substantial marquee from February to October to use in conjunction with their hotel

The erection and dismantling took several days and electricity was connected

= The LPA alleged that this was a building operation - the Planning Inspector disagreed.

= At first instance, the judge had held that a marquee which was on site for only 8 months could NOT be permanent.

= The Court of Appeal denied this, holding instead that both permanence and the character of the structure were relevant;

= The fact that the marquee could be moved from time to time was not relevant.

AND

R. (on the application of Westminster CC) v Secretary of State & Market Café PLC [2001]

= High Court held the kiosk was a building & its erection constituted a building operation.

= Planning Inspector in determining the kiosk was NOT a building operation had not considered the appeal decision in Skerritts [degree of permanence].

336 (1)

“building” includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

6. Regarding the Witness Statement of Mr D Murphy it is clear that once again unlike Mrs Joan Burstein CBE of Spencer House he was not aware of any permanent structure at the site since no structure could be seen consequent to the plethora of temporary structures the LPA had allowed to be erected and the several caravans with awnings used residentially. In the photo he produces he appears to have mistaken that of the house to the cladded caravan more clearly shown in Mr Sheehy's Appendix. Of course the site looked entirely different by mid-2017 since most of the caravans, all the temporary structures and seventy tons of rubbish had been removed and the position in terms of the difficulty of seeing the site prior to the refurbishment and clearance being effected was as described in the comments of Elizabeth Coll and Thora Frost. The appellant can confirm that Mr Murphy's statement at 13 that " the site has been substantially overgrown for some time and that it has not always been possible to tell what was on the site " is correct. Further the appellant can confirm that some of the tarpaulin and board fencing is there still and that it is of the same height as the metal fence installed in February 2017 prior to her ownership of the site.

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**APPELLANT'S RESPONSE TO THE JOINT SUBMISSIONS OF THE
HAMPSTEAD AND HEATH SOCIETY AND THE VALE OF HEALTH
SOCIETY**

1. The well-coordinated submissions by senior lawyers representing the interest of these two civic societies are advanced in collaboration with those of the LPA and the City of London. They do not reflect accurately the position obtaining. The less than sincere arguments put forward rely in their entirety on the Statutory Declarations of Mr Litvai and his compound community close associate Miss Logan. It would have been manifest that these two potential witnesses were consumed by a visceral grievance. It is considered by the appellant that the Statutory Declarations contradicting the evidence already in the public domain and the first Statutory Declaration sworn by Mr Litvai on 31 March 2017 are unlikely in the extreme to have been composed by Mr Litvai or Miss Logan. It appears to the appellant that the lawyers have selected only evidence expedient for their purpose from these two highly compromised sources in order to support their case that the structure the subject of the appeal did not constitute development within the context of Section 55 and ergo it could not be immune from enforcement under either Section 171 (b) 1 or 2. It is considered that they compound then their error in so doing by referring to case law which demolishes their own case were the appellant in a position to establish that it was incontrovertible that the development of this structure at first instance did constitute development within Section 55. The appellant will do so precisely with the support inter alios of the evidence from her Architect Mr Covey.

2. In the content of a Statutory Declaration sworn by the appellant on 14 September 2018 (Exhibit B Statement of Case) well before she received on Thursday 11 October 2018 copies of the second Statutory Declaration of Mr Litvai and the Statutory Declaration of

Miss Logan, the appellant deposed to the blackmail attempt by Mr Litvai demanding £50.000 pounds or the appellant's consent for him to move back to the site in perpetuity under threat of his changing his evidence were his demands not accommodated. The appellant will not be commenting in detail at this stage on either of the Statutory Declarations of Mr Litvai or Miss Logan but will be asking the Inspector to accept her apologies for having relied on Mr Litvai's Statutory Declaration 31 March 2017. She feels deceived and acknowledges now that any sworn statement advanced by Mr Litvai is unlikely to reflect the truth.

3. The galvanised metal fence and gates were installed within the existing wire perimeter fencing by the erstwhile owners in February 2017 in order to stop fly tipping and for security. The moveable concrete bollards were installed prior to the appellant's completion of her purchase. It is accepted by the appellant that her having been compelled to have purchased the site in the name of Polar Bren Ltd (the only activity ever performed by this Company), the circumstances of which has been explained in her Statutory Declaration, it has exacerbated the hostility she has suffered because it conveyed the erroneous impression that she was a property speculator. It is the appellant's intention to remove the fence so soon as her confidence in her security allows.

4. The appellant considers that it would be helpful to this appeal process were Camden Council, The City of London, The Heath and Hampstead Society and The Vale of Health Society to accept their failings in having allowed the unlawful activities which have persisted at the South Fairground site since 2005 to continue without intervention from any one of them. As is evidenced from the exhibit photos of the site today the hard truth of the matter is that Miss Lukka has done more to protect the amenity of this site than the combined efforts of all of them put together.

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APPELLANT'S RESPONSE TO STATEMENT MADE BY ELLEN SOLOMONS

1. In regard to paragraph 4 of Ellen Solomon's statement the appellant responds in her own words as follows: -

'After completion of purchase when my solicitor applied to register the South Fairground Site with no reference to Spencer House, it was the Land Registry that gave the property description as Spencer House.

On 4th August 2017, I was astonished to receive from the Land Registry new titles with a change of address to Duncan House, my former residence. Upon querying this with the Land Registry, I was informed that a solicitor, a Mr David Baker of Portner Law Ltd, 7-10 Chandos Street, London W1G 9DQ had made the application to them. I immediately telephoned Mr Baker to inquire and he hung up on me. Moments later he telephoned me to say his office had made a mistake and he would immediately reapply to the Land Registry to reinstate the address to Spencer House. Mr Baker informed me someone at Spencer House had appointed him (I assume Kamil Kellner). Since that time, I have changed the Titles to Bren Cottage for peace of mind.'

2. The evidence for which Ms Solomon's calls is within the exchange documents received by Camden Council 9 October 2018.

3. The appellant can confirm that Ms Solomons' reference at the opening of paragraph 6 to it "*not being possible to see into the SFS which was surrounded by a mixture of fences, tarpaulins and dense foliage*" is indeed correct. The appellant can confirm further that some of the boarded fence to which Ms Solomons alludes is extant and that it is the same height as the metal fence installed in February 2017 by the appellant's predecessors.

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**APPELLANT'S RESPONSE TO SECOND STATUTORY DECLARATION
LITVAI 19 JULY 2018**

1. The appellant finds it regrettable that evidence from a deponent who by his own admission has given false testimony in his first Statutory Declaration is engaged to support in its entirety the most tenuous case advanced by senior lawyers representing The City of London, Camden Council and both the highly influential Heath and Hampstead and Vale of Health Societies.
2. The appellant will prove beyond peradventure that that the second Statutory Declaration of Mr Litvai is equally as false as his first. It follows that there are two falsely sworn declarations extant and that this situation, the appellant is informed by the joint submissions at 27 (1), will be compounded by Mr Litvai and his close compound community associate Miss Logan giving further attestation under oath at the Inquiry to support the false evidence Mr Litvai has thus far conveyed.
3. It is submitted that were at some later stage, the aggregate criminality of three incidence of conveying false testimony under oath together with the menace and blackmail demand offence under Section 21 Theft Act 1968, to be investigated it would be likely to give rise to action by the DPP. In such circumstances the Inspector's determination and Decision in this appeal whichever way it may fall would be undermined to the deleterious consequence of all parties.

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APPELLANT'S RESPONSE TO ENFORCEMENT NOTICE

The Enforcement Delegated Report dated 14 December 2017 is riddled with inaccuracies. This is hardly surprising since it depended in terms of content on the specious claims of aggrieved parties now identified. No Planning Contravention Notice was served and it is unfortunate that there was little if any proactive dialogue. The Case officer did receive full information from the appellant and this is evidenced by the emails dated 13th July, 14th August and 20 September 2017 appended to this Statement of Response. The photographs to which he alludes were in fact those of the appellant which were used inter alia to prepare her architect's report and the Cadmap Plan. In effecting the enforcement notice in deference to the demands of others the Case officer has regrettably relied entirely on the delusive evidence of the aggrieved parties hereinbefore mentioned who have so undermined this planning process.

At the site meeting held on the 5 September 2017 the appellant was invited by Cilpa the Council's case officer's assistant to make application for a Certificate of Lawful Development. She was told that the appellant would consider this. However the appellant did not wish so to do until the site had been fully landscaped and the amenity of the setting had been fully recovered. Meanwhile the Enforcement Notice 18 December intervened.

Entirely outside of any evidence contained in any Statutory Declaration sworn by Litvai and his accomplice the appellant will establish that the structure her architect had inspected in February 2017 for his report was not only used continuously as a residence for at least four years before the enforcement notice was served but that the structure identified in the images produced 2013 was one and the same as that inspected by her architect.

Ergo it will be incontrovertible that it constituted development within Section 55 at first instance and that this is supported by the record of permanence now manifest. It is clear beyond doubt that it is immune from enforcement under the four year time bar 171 (b) 1 and 2.

This case proceeds now to Inquiry and is threatened by the introduction of false testimony by way of divers Statutory Declarations from one aggrieved on account of his blackmail demands being rejected. Each party is prejudiced by this most sinister and dangerous situation. The appellant has been left with the uncomfortable impression that not only has this compromised witness been suborned in regard to the content of his second Statutory Declaration but that his conduct has been motivated by his receipt of that which is described euphemistically as "*expenses*".

It is submitted by the appellant that given that the Inquiry date has been postponed (most likely for months) the pragmatic resolution of this matter could be achieved for the wider benefit of all by the LPA agreeing to grant on application the appellant a Lawful Development Certificate to which Cilpa referred 5 September 2017, withdrawing their enforcement notice and the appellant in turn withdrawing her appeal. Thus the Inquiry could be vacated and the long term amenity of the exquisite setting of the SFS secured for the benefit of the wider community.

N. Watts Appellant's representative.

Date: 6th November 2018

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APPENDIX 1

(Email also submitted in appeal)

From: J LUKKA [REDACTED]
Sent: 13 July 2017 12:28
To: Sheehy, John <john.sheehy@camden.gov.uk>
Subject: Re: South Fairground, Vale of Health. NW3 1AS

Dear Mr Sheehy,

As my lawyers have conveyed, copy enclosed, to you the concrete bollards were erected by the previous owners. I have given to you my undertaking to abide by your direction. I will arrange to have them removed within the time frame set out in the Council's letter.

Your third paragraph states "Regarding the South Fairground Site, no development is permitted at this site and no works of construction may be carried out that requires planning permission". I am well aware of this. No development requiring planning consent is being effected.

You make reference to enforcement notices but I suggest to you that the more prudent approach to pursue would be that of serving a Planning Contravention Notice to ascertain the facts in terms of the position obtaining before you proceed in this direction.

Yours sincerely,

Jita Lukka

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APPENDIX 2

(Email also submitted in appeal)

From: J LUKKA [REDACTED]
Sent: 14 August 2017 22:16
To: Sheehy, John <john.sheehy@camden.gov.uk>
Subject: Re: South Fairground, Vale of Health. NW3 1AS

Dear Mr Sheehy

The Council may have evidence that building works in the form (typographical error of **from** changed) of restoration to a permanent building that has been on site since 2007 has taken place. Such restoration work is not development within Section 55 TCPA 1990 as amended and does not require planning consent.

Were you concerned to apprise yourself of the facts before engaging in this further threatening correspondence you would have availed yourself of the site visit I offered to you 5 September or in the alternative my suggestion that you serve a Planning Contravention Notice.

I am not impressed with your deeply flawed assumptions or your threat to serve enforcement proceedings. Were you so to do they will be vigorously defended and will proceed immediately to appeal.

I trust that my position has been made abundantly clear.

Yours sincerely,

Jita Lukka

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APPENDIX 3

(Email also submitted in appeal)

From: J LUKKA [REDACTED]
Sent: 20 September 2017 15:29
To: John Sheehy <john.sheehy@camden.gov.uk>
Subject: Fw: Bren Cottage, Vale Of Health, NW3 1AS

Dear Mr Sheehy

Further to our correspondence please find enclosed attachments as follows:-

1. The Report from (will send in separate email attachment)

Chris Cox MCIfA FSA | Director | Air Photo Services Ltd
+44 7827 810361 The Shaftesbury Centre SN2 2AZ Interpretation of
aerial imagery, training, consultancy and expert witness
Archaeology Law Planning Environment Research

2. The report from my Building Surveyor Tony Covey ACABE, setting out all the refurbishment work carried out on the house since my purchase on 29 March 2017.

3. The copy correspondence with Camden Council regarding the drains.

4. The survey prepared by Cadmap Ltd

I refer to your email 15 September a copy of which is appended below for your ease of reference. Electric services prior to my purchase were provided to the house and residential caravans by an electricity line from The North Fairground site and also a generator on site. Water was provided by the water pipe to the communal toilets and fed to the house and residential caravans. I have no information of any utility bills. Since purchasing the site I have a metered supply. I have not yet received an account so I am not in a position to provide a utility bill but I undertake to let you have a copy of the first one that arrives. As you are aware I have arranged to pay my Council Tax but this needs to be assessed by the VOA and Winston is arranging for this to be done. I have filled out the requisite form and returned it to Winston.

Regarding your final paragraph you appear to be laboring under some misapprehension. This was a fairground site which had not been visited by the Council for the last 16 years at least. The house was constructed without planning consent and it was then continuously occupied as a residence for many years. When I purchased the site I have continued to occupy the house and carried out the refurbishment works as listed. Whilst in the process, the mobile caravan awning is attached to the house and will be detached by the end of November. It follows that the Council Tax records to which you allude do not exist. That having been stated you will be apprised of the Case Law and time bars which apply under TCPA 1990 as amended to this situation and that I am immune from any enforcement proceeding were you minded to issue them. **First Secretary Of State v (1) Arun District Council (2) Brown [2006] EWCA Civ 1172.**

Yours sincerely

Jita Lukka