Trinity Term

[2018] UKPC 19

Privy Council Appeal No 0100 of 2016

JUDGMENT

Singh (Appellant) v Rainbow Court Townhouses Ltd (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Reed

Lord Kerr

Lord Carnwath

Lord Hughes

Lady Black

JUDGMENT GIVEN ON

19 July 2018

Heard on 12 June 2018

Appellant	Respondent
Robert Strang	Brent Hallpike
Kiel Taklalsingh	Owen Roach
(Instructed by Charles Russell Speechlys LLP)	(Instructed by Axiom Stone)

LORD CARNWATH: (with whom Lord Reed, Lord Kerr, Lord Hughes and Lady Black agree)

1.
This appeal concerns the management of a development of townhouses known as Rainbow Court in the area of Sunrise Park, Trincity. The appellant, Shirlanne Sacha Singh, is the owner of unit 18 on which she is alleged to have carried out work without approval as required by her lease. The main issue is whether she established an arguable case that the management company acquiesced in the work or otherwise deprived itself of the right to injunctive relief.

The legal background

2.

Home Construction Ltd (“the lessor”) was the developer of Rainbow Court and is the lessor of the townhouses. The appellant is the owner of unit 18, under a lease granted to her predecessor on 6 June 2005 for a term of 199 years. Recital C of the lease indicated that the leaseholds within the development were being sold under a building scheme, in which the covenants would be mutually enforceable.

3.
The respondent (“the company”) is a company formed for the purpose of managing the development, and is described in the lease as the Townhouse Management Company. By a deed dated 8 March 2012 the lessor appointed the company as its agent, among other things, to fulfil its obligations under the leases of the townhouses and enforce their terms, but did not transfer any interest in the property which remained vested in the lessor. (Although the lease had envisaged that the lessor would transfer certain “reserved property” to a management company, this was never done.)

4.
Under the Fifth Schedule to the lease, the lessee covenanted with the lessor (para 9) not to make any alterations or additions in or on the property without first obtaining the lessor’s written approval, and (para 15(i)) to comply with any reasonable rules and regulations of the company. The company produced a document called the “Townhouse Community Guidelines” (“the guidelines”), which, among other things, required that before making alterations to townhouses, lessees should seek the company’s written approval; and set out certain “guidelines for maintaining the architectural standards for your Townhouse”.

5.
There is nothing in the document, or the papers before the Board, to indicate in terms its precise legal status or when and how it was adopted or made known to the individual owners. Under article XI “General Administrative Guidelines” it is stated:

“Notwithstanding any of the stated provisions in our townhouse scheme guidelines, the board of the management company and/or the landlord shall from time to time, as it deems necessary, make or amend these rules and regulations for the neighbourhood development scheme which shall become effective if and when a copy of the regulations is made available in print or electronic means to each unit owner.

The board and/or the landlord shall have the right to enforce such obligations, or breach of any rule regulation or restriction constituting a breach of these declarations.”

This suggests that they were seen as “rules and regulations” enforceable under para 15(i), but subject to copies being made available to individual owners. As will be seen, the appellant’s case is that she was only supplied with a copy on 5 November 2014, after she had started the works.

The appellant’s works

6.
On or about 3 November 2014 the appellant started to carry out works to the property. She had not sought or obtained the company’s consent, but, according to her defence, she had orally informed two officers on or about 26 October of her intention to carry out works. On 18 November 2014 the company’s board wrote to her referring to the “exterior construction” which had been taking place at the property:

“Verbal communication was made between yourself and one member of this board. There has been no formal request to the Architectural Control Committee/board of directors, as required in the Townhouse Community Guidelines (article VI Architectural Control Guidelines. pp 7-8) prior to the start of construction.”

The letter continued that “of concern to the board also” was that the appellant had given a verbal timeframe of one week for the works but construction was now in its second week, and that the works were causing disturbance and nuisance to other tenants. It asked the appellant immediately to set out the timeframe for completion of the work, to say what work was to be carried out in the common areas, and to agree to carry out work only within certain hours. It concluded: “We look forward to a peaceful resolution to this situation”.

7.
The appellant replied by letter dated 20 November 2014. She asserted (inter alia) that the guidelines were not valid in law, that the works were consistent with other works to townhouses within the development to which no objection had been taken by the board, and that in any event the works had been agreed by the board “through the verbal assurances of its agent(s)”, or objections had been waived. She added that works were substantially complete, and that finishing them would not cause dust or disturbance. The letter concluded:

“Since the date of your letter I have as a purely cosmetic measure designed to enhance the property erected four columns to the front of my property which do not in any way alter the structure of my property and which my attorneys have advised cannot reasonably be objected to for the reasons mentioned in the second paragraph above.”

8.
On 25 November 2014 the company wrote repeating the complaints as to carrying out of works without consent and resulting nuisance, demanding that she submit a written request for approval of the works, and threatening legal proceedings.

The proceedings

9.
On 28 November 2014 the company issued the present claim for declarations, injunctions and damages. An ex parte interim injunction granted by Pemberton J on 2 December 2014 was discharged by the judge on the appellant’s application on 7 January 2015 on the ground that it had become otiose following completion of the work, but she ordered the appellant to pay the company’s costs.

The pleadings

10.
The company’s case was set out in detail in a re-amended statement of case dated 23 January 2015. Under the heading “Particulars of the claimant’s mandate and responsibility” (para 4), it asserted (inter alia) that the lessor had transferred its remaining interests in the townhouses to the company to assume all rights and duties of the lessor for the townhouses. It referred to the relevant covenants in the Fifth Schedule to the lease, including the requirement for written approval for alterations or additions, and to the relevant provisions of the guidelines. It gave particulars of “unauthorised usage and/or illegal construction works”. The list included allegations both of specific works and of various forms of nuisance or disturbance. The offending works were described as follows in para 8:

“(b) construction/modification to the external part of unit 18 in the front and in the back of the unit involved in the erection of four pillars/columns which has completely changed the appearance of building in that there is no uniformed appearance; …

(g) removal of the decorative plants placed between the car ports and concretisation of the divide between car ports at units 17 and 19 (both bounding car port for unit 18);

(h) changing of the doors from the standard and approved door for all of the units at the Townhouses to non-uniform doors;

(i) installation of a window to the kitchen;

(j) removal of a wall at the rear patio and installation of a second double door at the rear of the property;

(k) installation of a step in the common walk way which is also tiled and which has fundamentally changed the otherwise uniformed appearance of the raw concrete pathway throughout the compound;

(o) other internal construction works inclusive of adding rooms and changing the layout as approved.”

11.
It was also alleged that “as a result of the breach of covenants and guidelines” by the appellant, the company had been put to expense or suffered loss, of which particulars were given as follows:

“(i) Cost to repaint gate - $60.00

(ii) Cost of decorative plants being destroyed - $916.25

(iii) Cost of roof repairs - to be quantified.”

12.
The relief sought included claims for declarations in respect of the alleged breaches, and mandatory injunctions in these terms:

“(c) … to remove the structure/s on the external part of unit No 18 that are not in conformity with the said guidelines and/or are not in conformity with the Townhouses layout as approved and in existence and/or changed the uniform appearance of the Townhouses, namely:

i.
The tiled over are[a] of the common walk way;

ii.
The erected pillars (columns) in the front and the back of the property;

iii.
The installed electrical fixtures which has made changes to the front of the erected pillars in which brightly coloured decorative lights are on nightly;

iv. The step in the common walk way;

iv.
The window to the kitchen;

v.

The doors at the front and back of the property which has completely changed the appearance of the building;

vii. The concretisation of the divide between car ports at units 17 and 19 (bounding car port for unit 18).

(d) … to replace the structure/s in the internal/external part of unit 18 that are not in conformity with the said guidelines and/or are not in conformity with the Townhouses layout as approved and in existence, namely the wall that was removed from the rear patio, internal modifications made by adding room or rearranging the architectural layout of the rooms."

Finally there were claims for special damages of $976.25 "plus additional costs for repair of roof", and "general damages".

13.
By her Defence, the appellant, inter alia, put the company to "strict proof" of para 4 of the claim ("mandate" of the company). She denied the nuisance allegations. She admitted carrying out the works described (with minor qualifications) but made specific responses, which can be summarised as follows (taking the lettering from the claim).

(b) She admitted the construction of the four pillars but said they had not changed the appearance of the property so as to alter its architectural uniformity with the other townhouses in Rainbow Court.

(g) She admitted removing only a small part of a hedge where water had been pooling, but added that the owner of townhouse 1 had removed her entire hedge and concreted over the space.

(h) She admitted changing her front door in 2012, but said that this was done with the knowledge of the lessor, who had never objected, and not materially changed the external appearance.

(i) She said the same about the added window, which was in any event very small and installed as a safety measure.

(j) She admitted the changes to the rear patio, but said that five other units had already materially changed their rear patios, so that there was already no uniformity.

(k) She admitted the existence of a step but said that it was on her property, not on the common walkway.

(o) She admitted the internal changes but said that three other units had extended without obtaining consent, and without objection.

14.
In relation to the claim for damages, she said that she had painted the gate in 2011 with the express permission of the company's then President; she denied removing the plants save as noted above; and the repairs to the roof were done by private arrangement with the company's contractor and at her own expense.

15.
At para 13 she referred to works done at ten other properties in Rainbow Court, with which her works were "consistent", and which had been carried out without consent but without attracting objection or proceedings. For example, she described the following works at Townhouse 1:

“Townhouse 1-conversion of front of property plant hedge to full concrete ground; construction of an extension which includes a new front room and additional room at rear of property …”

Photographs of the works were attached. She asserted (paras 14, 29) that she alone had been targeted by the company for reasons of malice, the objective being “to frustrate and harass her to the point that she permanently vacates her property”. She set out particulars of previous acts of alleged harassment or malice by officers of the company.

16.
With regard to the work in November 2014, she said that on about 26 October 2014 she had had oral discussions with the company’s property manager and a director, and had informed them of the proposed works, and had received no complaint, objection or request for an application for approval; but that on 5 November 2014, after the works had started, the company had supplied her, for the first time, with a copy of its guidelines. She also referred to the company’s letter of 18 November 2014, as evidence that the company had waived any objections to the works.

The application for summary judgment

17.
There were no further pleadings. On 15 April 2015 the company applied for an order striking out the defence as disclosing no grounds of defence and for summary judgment for the relief claimed. The supporting affidavit, sworn by the company’s attorney, relied on her admission of carrying out the works without consent. There was no substantive response to her allegations in respect of works to other townhouses, which were categorised as “a red herring”, as were her allegations about targeted malice. The draft order attached to the affidavit provided for the statement of case to be struck out “and/or an order for summary judgment dismissing the defendant’s case”. It did not in terms specify any substantive relief.

18.
There followed an exchange of detailed submissions by counsel on each side. First, the submissions for the appellant discussed the case law relating to striking out and summary judgment. She was said to have a realistic prospect of success based on issues of acquiescence and whether some of the alleged breaches actually occurred, raising questions of fact requiring investigation at trial. Reference was made to Shaw v Applegate [1977] 1 WLR 970, and Gafford v Graham (1998) P & CR 73. The defence of acquiescence or estoppel relied on three matters (para 37): works done since 2011 without prior objection; the letter of 14 November 2014; and works done by other residents ostensibly in breach of covenants but without any action being taken. No point was taken on the standing of the company as claimant; nor was any specific reference made to the allegations of malice. In the company’s submissions in response (signed by Mr Hallpike of counsel, who has appeared also before the Board), it was argued that the matters relied on did not establish an arguable case of acquiescence. It is notable that counsel for neither party seems to have thought it necessary to discuss the terms of any order or issues relating to relief.

The judgment of Pemberton J

19.
So far as appears from the agreed statement of facts, and the papers before the Board, the next event was the issue of the judgment of Pemberton J on 7 December 2015. This decision was made on the papers without any form of hearing. It is unnecessary to do more than refer to the main points in the judgment. The judge noted without further discussion the interest of the company, to which the lessor

had “assumed all rights, duties and obligations concerning the … townhouses” (para 1). Summarising the claim she said (paras 6-8) that the company’s complaint revolved around “[the appellant’s] construction and/or modification to the external part of the leased unit” and the work which “saw the erection of four pillars/columns which [the company] says has completely changed the appearance of the building, detracting from the uniformity of the Community …”. These works had been commenced “without receiving prior consent from its board of directors, which was in breach of the covenants and guidelines contained in the ‘Townhouse Community Guidelines’”. She added:

“I shall not detail here the alleged works … Suffice it to say that the photographs produced by both parties, tell the tale. The uniform appearance of the Community has been compromised by the appellant’s works.”

20.
She then summarised the defence as one of “acquiesce and estoppel” (sic) based on the fact that the appellant had received the Townhouse Community guidelines only two days after the works were commenced; on “her oral discussions with ‘persons’ who were allegedly servants and/or agents of [the company], and that they knew and could have seen that the works were being performed”; and that the company did not object to the conduct of the complained works, or notify her that she had to make a formal request”. She added: “[the appellant] also alleged several other issues, but to my mind they are not of moment to this matter” (para 11). (The matters of “no moment” seem to have included the alleged works at other houses, which were not further referred to in the judgment.)

21.
In the following paragraphs she discussed the defence as she understood it, including the authorities relied on, arriving at “the inevitable conclusion” (para 30) that the facts as pleaded could not support the position that the company was “acquiescent in the offending actions and is therefore estopped from bringing the action”. Under the heading of “Relief” (para 34), she noted the forms of relief claimed, including the mandatory injunctions, and observed that the appellant “did not see the need to treat with any of these reliefs claimed” and had never denied the company was entitled to the reliefs claimed. She accordingly made an order in the terms sought, which was duly issued by the court on 4 March 2016.

The appeal

22.
On 11 January 2016 the appellant filed a notice of appeal to the Court of Appeal, challenging the judge’s rejection of the possible defences of acquiescence or estoppel, and claiming that there were serious issues to be tried. By an amended notice dated 10 February 2016 she alleged in addition that the company had failed to establish its locus to bring the claim, and also that the judge had “failed to apply the appropriate principles which govern the grant of discretionary relief”, in particular the need for evidence.

23.
The appellant’s appeal and application for leave to appeal out of time were heard by the Court of Appeal (Archie CJ, Narine and Jones JJA) on 9 May 2016. The court seems not to have been supplied with copies of the record of appeal, and so had to make do with a single copy provided by counsel to the Chief Justice. The Board has the transcript of the argument, at the end of which the Chief Justice gave a short extempore judgment in these terms:

“On the question of consent or waiver, we do not believe that the letters of 18th and 20th can provide - to the extent that that was the contemporaneous documentation before the court - any possible support for the defences of consent or waiver. The comments of the judge with relation to acquiescence in the way in which it was framed, were obviously made in the context of how the case was before her, and so the question of acquiescence by silence did not arise and did not have to be dealt with. Further, on the question of locus standi, we think that [89 Holland Park (Management Ltd) v Hicks [2013] EWHC 391 (Ch)] and section 67 [of the Conveyancing and Law of Property Act cap 56:01] provide a complete answer. So in those circumstances, we do not think that there is any real prospect, and therefore we would not be minded to grant leave, and in any event, if you were to consider this, we do not think there would be any justification for a stay. So in all of the circumstances, the appeal is dismissed.”

Although the issue of works at other properties had been raised in the submissions, it was not mentioned in the judgment. Nor was there any discussion of the terms of relief.

24.
At a contested hearing on 6 June 2016, the Court of Appeal (Jamadar, Smith and Bereaux JJA) granted the appellant conditional leave to appeal to the Privy Council, and suspended the order of the judge pending determination of the appeal.

Issues in the appeal to the Board

25.
The following issues have been agreed for determination by the Board:

a. Were the Court of Appeal and the judge wrong to find that there was no defence to the claim? In particular:

i. Did the appellant put forward a defence of acquiescence or waiver in relation to works alleged to have been carried out without authorisation and in breach of the lease?

ii. Did the appellant put forward a defence in relation to the special damages allegations and the nuisance allegations?

iii. Did the appellant’s defence identify grounds for refusing the injunctive relief sought by the respondent?

b. Were the Court of Appeal and the judge wrong to find the matter fit for summary determination and grant the respondent the relief it sought?

c. What is the effect of the fact that the respondent is not a party to the lease; in particular, did the respondent have standing to bring this claim to enforce restrictive covenants in the lease?

Discussion

26.
It is convenient first to dispose of the last point which in the Board’s view is without merit. Mr Strang, counsel for the appellant, submits that the company itself, having no interest in the land, had no title to bring the claim. It should have been brought in the name of the lessor, for which the company was agent. Technically, no doubt, Mr Strang is right. He is also right that the case relied on by the Court of Appeal (89 Holland Park (Management Ltd) v Hicks [2013] EWHR 391 (Ch)) does not assist, since it was concerned only with the rights of successors in title or owners and occupiers for the time being

(under section 78 of the Law of Property Act 1925), neither of which categories applies to the company. However the point was not taken in the High Court by counsel then instructed for the Appellant, probably for the good reason that the defect had caused no prejudice and (as Mr Strang accepts) could have been corrected by amendment. In the Board's view it was too late to take the point for the first time in the Court of Appeal, and in any event it could and should have disposed of it on the same basis.

27.
Turning to the issue of acquiescence or waiver, questions (i) and (iii) are closely linked and best considered together. As will be seen, where the relief sought is mandatory in nature, analogous (and sometimes overlapping) equitable principles come into play in determining both the entitlement to relief and its form. For the appellant, Mr Strang submits in short that the judge failed to understand or properly address the defence of acquiescence, and its relevance both to entitlement to relief and to its form. She thought it enough that the appellant knew of her obligations under the lease, and that the respondent had not misrepresented the facts or the nature of the covenants. In particular she wrongly regarded as irrelevant the assertion that the ten other residents had carried out "consistent" alterations without approval or objection. She also gave equitable relief in the form of mandatory injunctions without adequately investigating the nature and effect of the alleged breaches or their circumstances.

28.
Mr Strang relies principally on the law as stated by Farwell J in Chatsworth Estates Co v Fewell [1931] 1 Ch 224. In that case properties within the estate were subject to covenants, enforceable by the company, preventing their use other than as private dwelling houses. The defendant was using his property as a guest-house which was admittedly in breach of the covenants. He relied on the acts and omissions of the company and its predecessors as a bar to equitable relief by way of an injunction. The evidence showed that the company or its predecessors had permitted breaches of covenants in several cases, including permitting conversions to flats, and permitting at least four houses to be turned into boarding-houses or hotels, and in other cases failing to prevent (in some because they did not know of) houses being used as boarding houses or guest houses. The judge noted references in the authorities to concepts such as waiver or acquiescence, and continued, at p 231:

"It is in all cases a question of degree. It is in many ways analogous to the doctrine of estoppel, and I think it is a fair test to treat it in that way and ask, 'Have the plaintiffs by their acts and omissions represented to the defendant that the covenants are no longer enforceable and that he is therefore entitled to use his house as a guest house?'"

29.
Mr Strang also relies on the fact that here, unlike in that case, the order sought was mandatory rather than prohibitory in form. He cites the well-known statement by Buckley J in Charrington v Simons & Co Ltd [1970] 1 WLR 725, 730:

"Different considerations may, I think, arise in a case where the court has to consider whether a defendant should be compelled by a mandatory order to remedy a breach of contract which he has committed from those which would arise if the question were whether the court should restrain a threatened breach of contract. To the latter case the principle enunciated by Lord Cairns LC in Doherty v Allman, 3 App Cas 709, 710, 720, may apply in its full rigour. Where a mandatory order is sought the court must consider whether in the circumstances as they exist after the breach a mandatory order, and, if so, what kind of mandatory order, will produce a fair result. In this

connection the court must, in my judgment, take into consideration amongst other relevant circumstances the benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant. A plaintiff should not, of course, be deprived of relief to which he is justly entitled merely because it would be disadvantageous to the defendant. On the other hand, he should not be permitted to insist on a form of relief which will confer no appreciable benefit on himself and will be materially detrimental to the defendant."

30.
That passage was cited with approval by Megarry J in Shepherd Homes Ltd v Sandham [1971] Ch 340, 351, where he said:

"… although it may not be possible to state in any comprehensive way the grounds upon which the court will refuse to grant a mandatory injunction in such cases at the trial, they at least include the triviality of the damage to the plaintiff and the existence of a disproportion between the detriment that the injunction would inflict on the defendant and the benefit that it would confer on the plaintiff. The basic concept is that of producing a 'fair result', and this involves the exercise of a judicial discretion."

It seems that neither of these authorities was cited to the judge.

31.
In considering these linked issues, the Board will start by looking at the general principles, before turning to the detail of the alleged breaches and the order made in respect of them. On the issue of waiver or acquiescence the Board is content to adopt the approach of Farwell J in the Chatsworth Estates case. It finds the authority of direct assistance, because like the present case it concerned enforcement of covenants by an estate company for the protection of an estate as a whole, rather than by an individual property owner against a neighbour (as in other cases cited below, such as Gafford v Graham (1998) 77 P & CR 73).

32.
However, that consideration tends to point against Mr Strang's submission. Farwell J recognised that the company had not been "unduly insistent" on the observance of the covenants, nor had it made its business to conduct inquisitorial examinations unless a matter was drawn to its attention by complaints of neighbours or otherwise (p 230). The issue was not whether breaches had been overlooked in individual cases but whether those omissions could be said to amount in effect to a representation that the covenants were no longer enforceable. On the facts of the case, Farwell J held that the company was not disentitled by its past actions from an injunction to restrain the defendant's use. Not only were there particular explanations for at least some of the cases, but to debar relief would make it extremely difficult for the company in future to prevent other persons carrying on guesthouses. Further, it was a clear case for an injunction without the need to show substantial damage, at p 233:

"Damages are no remedy because the object of the covenant is not to make persons pay for committing breaches but to prevent these breaches."

33.
Applying that approach to the present case, the Board agrees with the judge and the Court of Appeal that the exchanges in October and November 2014 cannot possibly be interpreted as amounting to representations by the company that the covenants in the lease requiring approval for works were no longer effective either in general or in relation to the appellant's proposed works. The mere failure of

two officers to make immediate objection in October 2014 when notified of works due to start within in about a week, without any detailed information of their nature cannot be interpreted as a representation of any kind on behalf of the company. The letter of 18 November 2014 contained no such representation, express or implied, and in any event cannot have been relied on as such by the appellant, being received at a time when most of the work had been completed.

34.
It is however unfortunate that the judge and the Court of Appeal failed entirely to address the allegations relating to works permitted or not objected to on other parts of the estate. Had they been referred to the Chatsworth Estates case, it is unlikely that they could have simply dismissed them as irrelevant. It is also unclear to what extent the judge had regard to the detail of the alleged breaches, apart from the “erection of four pillars/columns”, which she specifically identified as having changed the appearance of the building and detracted from the uniformity of the Community. That is a proposition which she thought amply demonstrated by the photographs. On that aspect the Board, having been shown the photographs, sees no reason to disagree. The works to other properties specified in the defence include some columns at the rear, but nothing apparently comparable at the front.

35.
However, the same clarity cannot be attached to the other works of which complaint is made. As has been seen they included works to the rear of the building and to the interior. They also included works which, according to the Appellant, had been carried out without objection two years before. On the face of the pleadings there was an arguable case that these were no different in kind to works which had been accepted without objection on other properties. Whether or not this gave rise to a case of waiver in the sense defined by Farwell J, they were at least arguably relevant to the scope of any mandatory order. It is difficult to see how fairness (in the sense described by Megarry J) would be served by an order which required the Appellant to carry out such works without any investigation of their significance, or how they compared to works accepted without objection on other properties on the estate. In so far as the guidelines are incorporated into the terms of the injunctions, there may also to be an issue as to their status and effect, and whether they were adequately drawn to her attention in advance of the works.

36.
Mr Hallpike did not seriously dispute the fact that works as described in the defence had been carried out without objection at other properties, but he emphasised that the company’s real concern was with the prominent works to the front of the building. If that is so, it is unfortunate that when formulating its detailed case, and applying for summary judgment, the company made no attempt to draw such distinctions. Symptomatic of the same lack of discrimination seems to be the inclusion at that stage of the claims for damages, the factual basis of which was obscure, and in respect of which the Appellant had raised apparently arguable defences (such as that gate had been painted with express permission).

Conclusion

37.
This is not a case which should have found its way to the Board. Although hard-fought it was a conventional neighbourhood dispute, raising no significant issue of general law or policy. The Board regrets the cost and delay with has resulted. With hindsight it seems unfortunate that the decision was made to deal with it without any form of hearing even on the detail of the relief. The Board was

given no information about the legal basis of the procedure, and it notes that no objection appears to have been taken to it by either party at the time. However, that did not absolve the judge of her duty to consider, not just the principle of the claim, but also the detail of the alleged breaches and of the relief sought.

38.
On what may have been seen as the main issue - the carrying out of prominent works to the front of the building - the judge was entitled to find that the defence had no merit. However, some at least of the overlapping issues of liability and relief relating to other alleged breaches were much more arguable. They were left unaddressed by both the judge and the Court of Appeal. To this extent the appeal must succeed, and the case must be remitted to the High Court for resolution of the disputed issues.

39.
The Board has considered whether it would be appropriate to leave in place the mandatory injunction in respect at least of the four pillars at the front of the building. However, it does not feel able, on the material before it, to make a principled distinction between the different parts of the mandatory injunction, no such distinction having been drawn in the statement of case or by the judge. Furthermore, if the Appellant is to be required to carry out substantial works of reinstatement, it seems fair to her (and perhaps preferable for her neighbours) that the full extent of her obligation is clearly defined at the outset and that she is able to do the works at one time.

40.
For these reasons, the appeal will be allowed and the case remitted to the High Court.