**NEUTRAL CITATION No: [2008] EWHC 1975 (CH)**

**Case Nos:8MA 30199 and CO/6114/2008**

**IN THE HIGH COURT OF JUSTICE**
**CHANCERY DIVISION**
**MANCHESTER DISTRICT REGISTRY**
**And**
**QUEENS BENCH DIVISION**
**ADMINISTRATIVE COURT**

Civil Justice Centre
1 Bridge Street West
Manchester

Date: []2008
8.8.08

**Before:**

**His Honour Judge Pelling QC**
**(Sitting as a Judge of the High Court)**

- - - - - - - - - - - - - - - - - - - -

**B E T W E E N:**

**BELFIELDS LIMITED**

**Claimant**

**-and-**

**SEFTON METROPOLITAN BOROUGH COUNCIL**

**Defendant**

**AND B E T W E E N:**

**THE QUEEN**
**(on the application of BELFIELDS LIMITED)**

**Claimant**

**-and-**

**SEFTON METROPOLITAN BOROUGH COUNCIL**

**Defendant**

- - - - - - - - - - - - - - - - - - - -

**Mr Anthony Elleray QC, Mr Stephen Connolly** and **Mr John Barrett** (instructed by Glassbrooks) for the Claimant
**Ms Frances Patterson QC** and **Mr Stephen Pritchett** (instructed by Eversheds) for the Defendant

- - - - - - - - - - - - - - - - - - - -

**Hearing dates**: 21st to 24th July 2008

- - - - - - - - - - - - - - - - - - - -

- - - - - - - - - - - - - - - - - - - -

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

- - - - - - - - - - - - - - - - - - - -

**His Honour Judge Pelling QC:**

**Introduction:**

1. The claimant (***Belfields***) is the owner and registered proprietor of a site known as the Penpoll site (***the site***). The defendant (***Sefton***) is the local authority for the Metropolitan Borough of Sefton being the area within which the site is situated. By a compulsory purchase order (***CPO***) made by Sefton on 29th June 2005 in exercise of its powers under *section 226(1)(a)* of the *Town and Country Planning Act 1990* and the *Acquisition of Land Act 1981* Sefton sought to compulsorily purchase various sites in and around a residential area known as the Klondyke estate (***The Order Lands***) including the site. The Order Lands are located about 1 mile north of Bootle and 6½ miles north of Liverpool and comprise over 200 residential and commercial properties. The site lies immediately to the north of the Klondyke estate. The Klondyke estate consists mainly of terraced housing. This area was chosen for re development because it represents the worst part of a very deprived wider area with low housing demand, industrial obsolescence and abandonment. The area suffers from deprivation in terms of income employment health and disability and suffers from substantial crime and disorder. The underlying purpose of the redevelopment is to address housing market failure in the area of South Sefton.

2. Belfields objected to the inclusion of the site within the scope of the CPO on the basis that it wanted to develop the site itself. As a result of this objection as well as others, there was a public enquiry which took place between July and November 2006 following which the Secretary of State adopted the recommendations contained in the inspector's report and confirmed the CPO. Notice of the confirmed CPO was published on 14th June 2007. A statutory appeal was commenced by Belfields which was dismissed on 21st December 2007. On 28th March 2008, Sefton purported to make a General Vesting Declaration giving effect to the CPO in relation to the site. An application for permission to appeal from the dismissal of the statutory appeal was made to the Court of Appeal and rejected following an oral hearing on 30th April 2008.

3. On 22nd April 2008, the Chancery claim I am concerned with was commenced (***the chancery proceedings***). In the chancery proceedings Belfields claim that Sefton is estopped from vesting the site in itself pursuant to the CPO and seek in consequence an order setting aside a General Vesting Declaration. The chancery proceedings are defended on a number of different grounds but the overarching defence is that estoppel is not available in private proceedings brought against a public authority exercising statutory powers duties or discretions at any rate where they arise in planning law following the decision of the House of Lords in *R (Reprotech (Persham) Limited v. East Sussex County Council* [2002] UKHL 8 [2003] 1 WLR 348 and the subsequent Court of Appeal decision in *South Bucks District Council v. Flanagan* [2002] EWCA Civ 690 and that the only basis upon which Belfields can claim the relief it claims is by reference to the public law doctrine of legitimate expectation. Belfields deny that this is so, contending that the code under which the General Vesting Declaration (***GVD***) was made does not form part of planning law as that phrase is to be understood where and when it is used in the cases relied on by Sefton and that the respective rights and obligations of the parties affected by a GVD are to be determined exclusively by reference to the private law concepts of contract estoppel and allied doctrines.

4. On 26th June 2008, Belfields commenced the judicial review proceedings now before me (***the JR proceedings***) seeking a quashing order based in essence upon the same factual allegations as are made in the chancery proceedings but advanced as giving rise to a legitimate expectation that the GVD would not be made in the circumstances that have arisen. These proceedings were commenced in case it was concluded that Sefton's over arching defence to the chancery proceedings succeeded. It was recognised as obviously appropriate that the JR and Chancery proceedings should be heard together and arrangements were made for the application for permission to bring the JR proceedings and the JR proceedings themselves if permission was granted to be heard by me concurrently with the trial of the chancery proceedings because I am authorised to sit in the Administrative Court as well as in the Chancery Division.

5. As will be apparent from what I have said so far, if Sefton is correct in its overarching defence then the chancery proceedings ought to be struck out or dismissed without

further ado. However, Sefton took the view that because of the litigation history that I have set out above, it was preferable that the chancery proceedings be determined in the course of a single trial at which all legal and factual issues between the parties were determined in a single judgment. However there was a pressing urgency for the proceedings to be determined quickly because further delay would or might endanger Sefton's funding for the redevelopment. It was this factor which had caused the Administrative Court to expedite the statutory appeal, the Court of Appeal to adopt similar measures in relation to the application for permission to appeal and HH Judge Waksman QC sitting as a judge of the High Court, Chancery Division to direct that the chancery proceedings be tried expeditiously. In the event the trial was fixed to take place over a period of 13 days starting on 14th July 2008 at which all issues in the chancery proceedings together with the application for permission to bring judicial review proceedings and the application for judicial review (if permission was granted) were to be determined.

6. Very unfortunately, Mr John Costello, the sole director and principal shareholder of Belfields, was admitted to hospital shortly before the commencement of the trial. This caused Mr Elleray QC to apply on behalf of Belfields at the commencement of the trial for an order vacating the trial date. In making that application he submitted that the overarching defence to the chancery proceedings was something that could and should be determined in any event as a preliminary issue and he also accepted that the JR proceedings could and should be determined in the event I concluded that the overarching defence to the chancery proceedings succeeded. Ms Patterson QC for Sefton opposed the application and maintained the position that there should be a single trial of all issues and that the trial should proceed in the absence of Mr Costello. Ms Patterson submitted that if I concluded that the trial could not proceed, then she too wished the overarching defence to the chancery proceedings to be determined as a preliminary issue and the JR proceedings determined as well in the event that I concluded that Sefton's over arching defence to the chancery proceedings should succeed.

7. I acceded to Mr Elleray's application because I could not see how a trial could fairly proceed in the absence of Mr Costello when he was the sole source of instructions on behalf of Belfields, that this was likely to be of more than usual importance where as here the trial had come on with extreme expedition and also because Sefton could not agree his witness statement. However, I directed that the over arching defence to the chancery proceedings should be determined as a preliminary issue and that the judicial review proceedings should also be determined in the event that I concluded that the over arching defence to the chancery proceedings succeeded. Mr Elleray asked for some time in which to prepare on the revised basis since he had not anticipated having to address these issues so early in the trial window. Ms Patterson was content for this approach to be adopted and in the end the hearing of preliminary issue in the chancery proceedings and the judicial review proceedings took place between the dates referred to above.

8. I am thus concerned with three matters only:

   8.1. whether the chancery proceedings ought to be dismissed by reference to Sefton's assertion that a plea of estoppel is not available to Belfields as a matter of law;

   8.2. whether permission ought to be granted for Belfields to bring judicial review proceedings; and

   8.3. whether, if permission be given, Belfields' application for judicial review ought to succeed.

**The Chancery Proceedings**

9. It is common ground that the success or otherwise of the over arching defence to the chancery proceedings is to be determined on the assumption that Belfields' case on the facts as pleaded is correct. I set out those facts below. Nothing I say should be construed as a finding that what is alleged by Belfields is correct factually. Whether that is so or not can only be determined following a trial.

10. Belfields' case on the facts is pleaded at paragraphs 6-18 of the Particulars of Claim. In summary, Belfields' case is that it was aware of the development potential of the site and with that in mind it appointed a firm of architects, CRL, to act on its behalf to design a redevelopment scheme for the site. Given its interest, Belfields say that it by its architects sought and received an assurance that Sefton would not compulsorily purchase the site if Belfields embarked upon a redevelopment scheme on the site for which it had obtained relevant planning consents. The assurance relied on is contained in an e mail from Mr Alan Lunt, a senior official employed by Sefton, to Mr Apollo Leong of CRL dated 6 July 2005. In so far as is material, that e mail was to the following effect:

> *"As I said when we met a few weeks ago, the CPO will be made but will be utilised as a last resort. Therefore, if there is evidence of the owner of the site or a developer being able to progress the development of the site, in accordance with the SPG for the area, in a timely fashion, then* [Sefton] *would see no requirement in acquiring the land by compulsion, despite the potential existing to do so. Our aim is to see the land developed, not to become a land owner in the long term!"*

"*SPG*" stands for Special Planning Guidance. I should make it clear that Ms Patterson told me at the outset that it did not seek to rely on any failure by Belfields to comply with the SPG for the purposes of the present proceedings. Sefton's case on the facts is that Belfields have not progressed the development for which it has planning permission or alternatively has not done so timeously. I should add that in the course of her oral submissions but not in her written submissions, Ms Patterson sought to argue that the effect of the assurance ceased to have any effect from the filing by Sefton if its Statement of Case prior to the start of the Enquiry because in that document Sefton had made it clear they were seeking a CPO that was enforceable unconditionally and that on true construction that is what the Inspector concluded Sefton should have and what the confirming letter sent on behalf of the Secretary of State also concluded it should have.

11. At paragraph 13 of the Particulars of Claim Belfields pleads that the contents of the e mail quoted above constituted an assurance by which:

> " ... [Sefton] *encouraged* [Belfields] *to believe and* [Belfields] *did believe that* [Belfields] *would retain its freehold interest in* [the site] *provided that* [Belfields] *proceeded timeously with the redevelopment of* [the site] *and thus that* [Sefton] *would not exercise its entitlement to require* [Belfields] *to transfer* [the site] *to it so long as* [Belfields] *proceeded timeously with the redevelopment*"

and pleads at paragraph 14 of the Particulars of Claim that it has relied upon that assurance to its detriment by thereafter "... *pursuing a comprehensive scheme for the redevelopment of the site timeously*". The particulars of reliance and detriment extend to some 13 sub paragraphs of paragraph 14 of the particulars of claim but in summary consist of:

11.1. Belfields having incurred liabilities to CRL of in excess of £612,000 of which £250,000 has to date been paid;

11.2. paid planning fees to Sefton of in excess of £25,000 for reserved matters planning approval;

11.3. Obtained air quality and noise assessment reports at a cost of £4600 odd;

11.4. Engaged Amec Earth & Environmental UK Limited to produce a site decontamination report and scheme at a cost to date of in excess of £63,000; and

11.5. Clearance of buildings from the site resulting in a loss of rental income to date of in excess of £500,000.

Although not pleaded as yet, Mr Elleray also sought to rely on an assertion on behalf of Sefton first made in the context of a security for costs application by Sefton in the chancery proceedings (which was abandoned without being made) that the site is now worth no more than £100,000 as a result of the clearance of the buildings by Belfields for

the purpose of furthering its development scheme. Whilst Mr Elleray made it clear that his client did not accept this as correct and indeed maintained its position that the site was worth £4 million or more in its present condition, he nonetheless relied on the fact that his client was exposed to such an allegation as detriment because the buildings would not have been removed otherwise than in reliance upon the assurance given by Mr Lunt. Belfields' pleaded case is that it is unconscionable for Sefton to proceed as it has, that if Sefton is permitted to proceed the result will be a loss to Belfields not merely of the reliance expenditure I have referred to above, but the loss of the development value of the site and a possible reduction in the compensation payable as a result of the compulsory purchase of the site caused by the clearance work done on the site in furtherance of Belfields development scheme in reliance upon the assurance that it had received.

12. Having set out the factual basis of Belfields' claim in the chancery proceedings, I now turn to the statutory background.

13. Section 226 and Section 227 of the Town and Country Planning Act 1990 provide that:

"***226.***

***Compulsory acquisition of land for development and other planning purposes.***

*(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area*
*(a) If the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land, or*
*(b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.*

*(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—*
*(a) the promotion or improvement of the economic well-being of their area;*
*(b) the promotion or improvement of the social well-being of their area;*
*(c)the promotion or improvement of the environmental well-being of their area.*
*. . .*
*(2A) The Secretary of State must not authorise the acquisition of any interest in Crown land unless—*
*(a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and*
*(b) the appropriate authority consents to the acquisition.*

*(3) Where a local authority exercise their power under subsection (1) in relation to any land, they shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily—*
*(a) any land adjoining that land which is required for the purpose of executing works for facilitating its development or use; or*
*(b)where that land forms part of a common or open space or fuel or field garden allotment, any land which is required for the purpose of being given in exchange for the land which is being acquired.*

*(4) It is immaterial by whom the local authority propose that any activity or purpose mentioned in subsection (1) or (3)(a) should be undertaken or achieved (and in particular the local authority need not propose to undertake an activity or to achieve that purpose themselves).*

*(5) Where under subsection (1) the Secretary of State has power to authorise a local authority to whom this section applies to acquire any land compulsorily he may, after the requisite consultation, authorise the land to be so acquired by another authority, being a local authority within the meaning of this Act.*

*(6) Before giving an authorisation under subsection (5), the Secretary of State shall—*
*(a) if the land is in a non-metropolitan county in England, consult with the councils of the county and the district;*
*(b)if the land is in a metropolitan district, consult with the council of the district;*
*(bb) if the land is in Wales, consult with the council of the county or county borough; and*
*(c)if the land is in a London borough, consult with the council of the borough.*

*(7) The Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under this section.*

*(8) The local authorities to whom this section applies are the councils of counties, county boroughs, districts and London boroughs.*

*(9) Crown land must be construed in accordance with Part 13.*

***227.***
***Acquisition of land by agreement.***

*(1) The council of any county, county borough, district or London borough may acquire by agreement any land which they require for any purpose for which a local authority may be authorised to acquire land under section 226.*

*(2) The provisions of Part 1 of the Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, section 10 and section 31, shall apply in relation to the acquisition of land under this section."*

As will be apparent from these provisions, the local authority is not permitted to exercise its powers under *Section 226(1)(a)* unless one of the "*well being*" tests set out in *Section 226(IA)* is satisfied and only then once authorised by the Secretary of State – see *Section 226(3)*. *Section 227* sets out an alternative means by which a local authority can proceed by authorising a local authority to purchase land by agreement as opposed to using the compulsory purchase powers conferred by *Section 226*. This is the statutory means by which the advice contained in Paragraph 24 of *ODPM Circular 06/2004* that "*... acquiring authorities should seek to acquire land by negotiation whenever practicable ...*" can be carried into effect.

14. As is apparent from *Section 226(7)* of the 1990 Act, the *Acquisition of Land Act 1981* applies to the compulsory purchase of land pursuant to *Section 226*. By *Section 1(1)(a)* of that Act:

"*In this Act "compulsory purchase" means a compulsory purchase of land, being—*

*(a) a compulsory purchase to which this Act applies by virtue of any other enactment, whether or not passed or made before this Act*"

*Section 2(1)* provides that the authorisation of a compulsory purchase shall be conferred by a compulsory purchase order and *Section 2(2)* provides that a compulsory purchase order will take effect only once it has been confirmed by the relevant confirming authority in accordance with Part II of the Act. *Sections 13 and 13A* provide for the circumstances in which confirmation is to be given if there are no objections and as to how the confirming authority is to proceed where, as here, there are objections. *Section 13A(3)* provides for a public local enquiry to be held as one of the options. It was this option that was adopted in this case. One of the objectors was Belfields which objected notwithstanding the assurance that it claims it was acting under at the time. The confirming authority may confirm the order with or without modifications if it has considered the objection and has considered the report of the person who held the local public enquiry – see *Section 13A(5)* – and by *Section 24* of the Act, a compulsory purchase order becomes operative on the date when notice of the confirmation is first published. Any person aggrieved by a CPO is given a statutory right of appeal to the High Court on limited grounds – see *Section 23* of the Act. Such an appeal has to be made

within 6 weeks from the date of first publication of the notice of confirmation. It was this provision that Belfields relied on in its appeal to the High Court that I have referred to already. It would not have been possible for Belfields to assert that the CPO contradicted a legitimate expectation created by the assurance and Belfields' detrimental reliance upon it because it is not suggested that assurance relied on had the effect of preventing Sefton from making a CPO at all but only that Sefton was precluded from giving effect to the CPO (if otherwise confirmed) save in the circumstances set out in the assurance. This being so, it seems to me that the issue I am now considering was not and could not be considered either by the Inspector or the Secretary of State or the Administrative Court when hearing the statutory appeal. Indeed, it seems to me that the issue that I am concerned with could only become justiciable if and when it was alleged that Sefton was seeking to give effect to the CPO otherwise than in accordance with the assurance which had allegedly been relied on. In my judgment the Statement of Case filed by Sefton prior to the start of the Enquiry has to be read with that in mind as does the Inspector's report and the confirming letter written on behalf of the Secretary of State.

*15.* Once the procedures set out in the 1990 and 1981 Acts have been exhausted, and assuming that the CPO has been confirmed and any appeals dismissed (as was the position here), then the council must next proceed (if it wishes to proceed at all) by reference to the powers conferred by the *Compulsory Purchase (Vesting Declarations) Act 1981* (***VDA***). It is Mr Elleray's argument that public law ceases to be relevant once the procedures set out in the 1990 and 1981 acts have been exhausted and that the rights and obligations of the parties are thereafter exclusively the subject of private civil law. He says that such is the position in relation to purchases being undertaken pursuant to *Section 227* of the 1990 Act and that is exactly the same position that applies in relation to a compulsory purchase order that is being given effect to pursuant to the VDA.

16. The scheme of the VDA involves the publication of preliminary notices (*Section 3*), the execution of a GVD (*Section 4*) and the service of post GVD execution notices (*Section 6*). *Section 4(1)* of the VDA provides that

> *"The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves from the end of such period as may be specified in the declaration (not being less than 28 days from the date on which the service of notices required by section 6 below is completed)."*

The ***vesting date*** for the purposes of the VDA is the first day after the end of the period defined in the GVD as being the period after the expiry of which the land in question is to vest in the acquiring authority. By operation of *Section 8* of the VDA, on the vesting date:

> *"... the land specified in the general vesting declaration, together with the right to enter upon and take possession of it, shall, subject to section 9 below, vest in the acquiring authority as if—*
> *(a) the circumstances in which under Part I of the Compulsory Purchase Act 1965 an authority authorised to purchase land compulsorily have any power to execute a deed poll had arisen in respect of all the land, and all interests therein, and*
>
> *(b) the acquiring authority had duly exercised that power accordingly on the vesting date."*

17. Mr Elleray identified *Section 4* of the VDA as conferring a discretion on the acquiring authority whether to proceed with the execution of a GVD or not. In my judgment this is plainly correct and not disputed. Mr Elleray submitted that it was this discretion that entitled an acquiring authority to waive the right to execute a GVD or limit the circumstances in which a GVD would be executed. Ms Patterson accepted that there was a power to act as Mr Elleray suggested although her submission was that the discretion resulting from the use of the word *"may"* in *Section 4* (which if read in isolation might be thought to create an unqualified discretion) but was to be read subject to *Section 111(1)* of the *Local Government Act 1972* which provides:

> *Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a*

*local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.*

The use of the word "*may*" in Section 4 of the VDA eliminates any suggestion that an acquiring authority is obliged to execute a GVD once its CPO has been confirmed but by the same token, as Mr Elleray said in the course of his reply, a local authority is a creature of statute. Its powers are conferred by statute and in my judgment Ms Patterson is correct in submitting that the discretion conferred by the use of the word "*may*" is to be read subject to and is limited by section 111(1) of the 1972 Act.

18. Against that statutory background I now turn to the submissions of the parties.

19. In support of its case Sefton relies principally on R (Reprotech (Pebsham) Limited) v. East Sussex County Council [2002] UKHL 8 [2003] 1 WLR 348 (***Reprotech***). That case was concerned with the degree to which if at all Reprotech was entitled to rely on assurances given by a local authority official that a particular proposed change of use did not require an application to be made under the then applicable provisions of the 1990 Act. The House of Lords held (overturning the Judge and the Court of Appeal) that there was no material on which it could be said that the local authority were estopped from asserting that a change of use application had to be made. It follows as was common ground between the parties before me that the comments made in the speeches in the House of Lords concerning the role of estoppel in public law contexts was strictly speaking *obiter*. It was but it is *obiter* of the highest authority and worthy of the most serious respect. The leading opinion was that of Lord Hoffmann with whom the other members of the House present agreed. In the course of his speech Lord Hoffmann said at paragraphs 28-29:

> *"A reading of the legislation discloses the following features of a determination. First, it is made in response to an application which provides the planning authority with details of the proposed use and existing use of the land. Secondly, it is entered in the planning register to give the public the opportunity to make representations to the planning authority or the secretary of state. Thirdly, it requires the district authority to be given the opportunity to make representations. Fourthly, it requires that the secretary of state have the opportunity to call in the application for his own determination. Fiftly the determination must be communicated to the applicant in writing and notified to the district authority.*
>
> *It is, I think clear from this brief summary that a determination is not simply a matter between the applicant and the planning authority in which they are free to agree on whatever procedure they please. It is also a matter which concerns the general public interest and which requires other planning authorities, the secretary of state on behalf of the national interest and the public itself to be able to participate."*

Having considered some earlier case law Lord Hoffmann then continued at Paragraphs 32 to 35:

> *"... I think that even if the council was a private party, there is no material on which an estoppel could be founded. The opinion of the county planning officer could not reasonably be taken as a binding representation that no planning permission was required. ...* [33] *In any case, I think it is unhelpful to introduce private law concepts of estoppel into planning law. As Lord Scarman pointed out in Newbury DC v. SSE [1981] AC 578,616, estoppels bind individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended into the "public law of planning control, which binds everyone". ...* [35] *... It is true to say that in early cases ... Lord Denning MR used the language of estoppel in relation to planning law. At that time the public law concepts of abuse of power and legitimate expectation were very under developed and no doubt the analogy of estoppel seemed useful. ... It seems to me that in this area, public law has already absorbed*

> *whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand on its own two feet".*

Mr Elleray submits that on a careful reading of these dicta, Lord Hoffmann is to be treated as confining his remarks to the area of law identified in Paragraph 33 namely "*the public law of planning control, which binds everyone*". He submits that this analysis is supported by the rationale for the dicta being that set out by Lord Hoffmann in Paragraph 29 of his speech namely that the determination in question is not one which concerns only the parties to it but also the public at large or a relevant section of the public. He makes the entirely valid point that a line has to be drawn somewhere between the council acting as and being subject to the principles of law that bind private individuals and the council acting as a public authority where its relations with the public are governed by principles of public not private law. He submits that Lord Hoffmann has defined where the line should be drawn at any rate in relation to planning law. He submits that in consequence whilst public law might apply to the issues covered by the 1990 and 1981 Acts that ceases to be so at the point when the CPO is confirmed and the statutory appeal process has been exhausted. After that, it is submitted, the parties' relations are governed by private law exclusively. Ms Patterson rejects this analysis, submitting that such distinctions are artificial, are likely to be a source of ongoing uncertainty and as being inconsistent with subsequent case law. She submits that in reality the rationale that led to Lord Hoffmann reaching the conclusions he reached concerning planning control apply with equal force to the question whether a confirmed CPO should be activated, particularly when the CPO had been made and confirmed by reference to one or more of the "well being" provisions set out in *Section 226* of the 1990 Act.

20. In my judgment Ms Patterson is correct in these submissions. In *Flanagan v. South Bucks DC* [2002] EWCA Civ. 690, the Court of Appeal was concerned with a decision of HH Judge Parry sitting at Slough County Court in which he had held that the local authority were estopped from enforcing certain planning notices that purported to restrict the use of some land at Farnham Royal for the storage of vehicles, scrap metal building materials and other similar items. It is submitted that this was not a case that was concerned with "*the public law of planning control, which binds everyone*" but rather with the enforcement of planning control. Before the Court of Appeal, counsel for the Appellants did not seek to uphold the decision of the county court judge on the basis of estoppel because it was conceded that "*... estoppel by representation really no longer has any part to play in planning law ... One is here in the realm of public law. That has now been emphasised by the House of Lords' decision in* [Reprotech] *where Lord Hoffmann, with whom the other members of the house agreed, said that "... it is unhelpful to introduce private law concepts of estoppel into planning law*" – see Keene LJ at Paragraph 16. Keene LJ continued:

> *It is clear that the House saw the earlier cases where estoppel had been applied in planning law as an attempt to achieve justice at a time when the concepts of legitimate expectation and abuse of power had scarcely made their appearance in public law. Now that those concepts are recognised, there is no longer a place for the private law doctrine of estoppel in public law or for the attendant problems which it brings with it."*

Ms Patterson emphasises the very general references to planning law and public law in the judgment of Keene LJ as justifying her submission that estoppel is not a concept available to Belfields against Sefton in the circumstances of this case. She submits that this case clearly demonstrates the extension of the approach adopted by Lord Hoffmann in *Reprotech* to a new area of the law and thus shows that the restrictive approach to what Lord Hoffman says in that case is not justified. She submits that even if that is wrong, *Flanagan* shows the modern approach is to extend reasonably readily what Lord Hoffman said in *Reprotech* to areas not previously covered but which falls within what constitutes planning law and thus that the current approach would be to apply the principles identified by Lord Hoffmann to a case such as the present. Mr Elleray's answer to the reliance placed on *Flanagan* is that the issue that arose in that case (the enforcement of planning control) was one which the public or a section of the public had a legitimate interest in and thus could be distinguished from the present case, where, he submitted, no such interest arose.

21. Whilst I accept that the public have an interest in planning authorities enforcing planning controls, I do not see that the public interest identified by Lord Hoffmann in paragraph 29 of his speech in *Reprotech* arises in the same way in a case such as *Flanagan.* This suggests that Lord Hoffmann's approach is not to be applied restrictively and that the Court of Appeal did not do so in *Flanagan* .In my view this approach is also supported by the decision of Sullivan J in *R (Wandsworth BC) v. SSTLGR* [2003] EWHC 622 (Admin), a case which concerned a challenge by a local authority to an inspector's decision to quash an enforcement notice by which it was alleged that a telecoms mast had been erected in breach of planning control. The inspector had concluded that the council was estopped from asserting the breach by reason of the terms of a prior approval notice. In quashing the decision, Sullivan J referred extensively to *Reprotech* and then said at Paragraph 21 of his judgment " *In my judgment the House of Lords could not have made it more plain that estoppel no longer has any place in planning law.".* In my judgment it is plain that Sullivan J was using the phrase *"planning law"* in a much wider way that Mr Elleray would wish me to adopt. The implication of Sullivan J's judgment is clearly that if a party wishes to assert that a planning authority is to be precluded from relying on its statutory powers, then it must do so by relying on an asserted legitimate expectation and not by attempting to set up an estoppel when faced with enforcement proceedings.

22. Notwithstanding the points so far considered, Mr Elleray points to a wide selection of other Acts which incorporate the 1981 Act which he submits cannot be said to relate to planning law. It therefore follows, he submits, that the VDA cannot be regarded as part of planning law as that phrase is used in the cases to which I have so far referred. Ms Patterson submits that it is simply not open to Mr Elleray to argue that steps taken pursuant to the VDA do not come within the scope of planning law. In my judgment, Ms Patterson is correct in her submissions on this point. It is artificial to attempt to divorce the carrying into effect of a CPO made pursuant to what is unquestionably planning law (the application of *Section 226* of the 1990 Act as amended) from the making and subsequent confirmation of the CPO. In my view Ms Patterson is correct when she says that her submission on this point is amply supported by the long title to the 1981 Act namely *"an act to consolidate the provisions of the Town and Country Planning Act 1968 concerning general vesting declarations and related enactments".* The procedure contained in the 1981 Act was first introduced by *Section 30* of the *Town and Country Planning Act 1968* and was extended and re-enacted by the 1981 Act. Mr Elleray's point might be arguable if advanced by reference to a CPO made pursuant to legislation other than the 1990 Act but that issue does not arise in this case and I do not have to decide that point. In my judgment it is not arguable by reference to a CPO made pursuant to the *Town and County Planning Act 1990* .

23. Ms Patterson's submission based on this triumvirate of cases to which I have so far referred is that it is simply no longer possible for it to be said that estoppel is available to private land owners as an answer where as here a local authority is exercising its statutory powers for statutory purposes. I agree. In my view the public interest in the making and confirming of CPOs made under those provisions is as much engaged by an attempt by a local authority to give effect to a confirmed CPO (which it has to do using the machinery provided by the VDA) as it is by the decision to make, and the attempt to obtain statutory confirmation of, the CPO. The limits that Mr Elleray seeks to impose are in my judgment artificial, unjustified by principle and in any event fly in the face of the relevant case law being that which I have so far referred to. A rule to the effect contended for by Mr Elleray would be uncertain in its scope in an area in which certainty is important and delay unacceptable and is likely to increase litigation, and the cost of litigation. In my view the phrase *"planning law"* at it is used in the authorities to which I have referred is to be understood in a wide and inclusive way and certainly as being wide and inclusive enough to apply to a decision by a local authority to give effect to a confirmed CPO. In my judgment this inclusive approach to the use of the expression *"planning law"* in the cases to which I have so far referred was emphasised by Keene LJ in *Henry Boot Homes limited v. Bassetlaw DC* [2002] EWCA Civ 983 where at paragraph 52, following a citation of paragraph 29 of Lord Hoffmann's speech in *Reprotech* he said:" *That is very much the nature of town and country planning law. Even more than many areas of public law which concern the individual and a public body, planning law is likely to have to reflect the fact*

*that third parties and the public generally may have interests in any decision."* [Emphasis supplied]

24. In the course of his submissions, Mr Elleray suggested that because a local authority could contract under *Section 227* it could therefore estop itself in a way which made it amenable to a proprietary estoppel claim. I do not accept this as correct. If a contract is entered into it may well be that the parties rights are to be resolved by reference to the contract but if there is no relevant contract it does not follow that whatever rights the parties have is to be resolved by estoppel as opposed to legitimate expectation. This case is concerned exclusively with the enforcement of a CPO made pursuant to *Section 226*.

25. The further submission made by Mr Elleray was that because it was accepted that the local authority could restrict, suspend or prevent the subsequent enforcement of a CPO made pursuant to *Section 226* by agreement, it therefore followed that it could do so by estoppel. I do not accept this submission either. There is no logical link between one and the other for the reasons I have set out in Paragraph 24 above. At one point Mr Elleray suggested that if this approach was correct then it would follow in an appropriate case that a land owner that contracted with a local authority would not be able to enforce its contractual rights otherwise than in judicial review proceedings. In my view this point is clearly wrong as is the corollary namely that because a landowner in the position of Belfields must be in a position to enforce its contractual rights by seeking specific performance it follows that a land owner must also be able to seek to vindicate its rights by reference to estoppel in ordinary civil proceedings. In my judgment this confuses the substantive with the procedural. A contract with a local authority is enforceable as is any other form of contract. Where a private land owner is sued by a local authority in the civil courts for a remedy relating to a planning law issue (as happened in *Flanagan*) it is open to the land owner to defend himself by reference to the legitimate expectation doctrine but not (as would otherwise be the case) by reference to any of the various types of estoppel – see *Flanagan per* Keene LJ at Paragraph 17 of his judgment. Where a land owner seeks redress against a local authority otherwise than by defending a claim of this sort, then it is probably more appropriate for such relief to be sought in judicial review proceedings. However, that issue does not arise for consideration in this case because no relief is claimed in the chancery proceedings by reference to legitimate expectation and the only proceedings in which a remedy is sought by reference to that doctrine is in the judicial review proceedings. Nonetheless, *Flanagan* shows that the availability of estoppel does not depend upon the type of proceedings in which the issue arises.

26. Aside from the points that I have so far considered and rejected, Mr Elleray maintains that there is authority which pre dates *Reprotech* and the other cases to which I have referred above which were not either cited to or overruled by the House of Lords. It is submitted that these cases are binding on me and that I should follow them notwithstanding what is said in the three cases to which I have so far referred and even if I come to the conclusion that Ms Patterson is otherwise correct in her submission as to the wide effect of what is said in them.

27. The first of the cases relied on by Mr Elleray was *Simpsons Motor Sales (London) Limited v. Hendon Corporation* [1964] AC 1088.This case was concerned with an attempt by a local authority to enforce in October 1958 a CPO made in March 1952. The landowner sought and obtained at first instance an injunction to restrain the local authority from proceedings on the basis of an increase in land values between the two dates I have mentioned. The Court of Appeal reversed the first instance decision and that was upheld by the House of Lords. In reaching that conclusion, Lord Evershed accepted that there might be circumstances where a court could interfere. Those circumstances were defined as being where to permit the local authority to enforce its rights under the CPO would : *"be against good conscience. In order to achieve such a result it seems to me that it would be necessary to show one or both of the following: that there had been on the part of the Corporation, something in the nature of bad faith, some misconduct, some abuse of their powers: that there had been on the part of Simpsons some alteration of their position – something must have been done or not have been done by them on the faith and in the belief that there would be a speedy acquisition of the North road site: in other words, that they had in some sense been put into an unfair position because of the long period*

*which had elapsed since the service of the notice to treat".* Mr Elleray submitted that this was House of Lords authority for the proposition that a land owner could on proper facts rely on estoppel in support of an application for an injunction to restrain a local authority from relying on a CPO.

28. I reject Mr Elleray's submission. In *R v. Carmarthen DC ex parte Blewin Trust Limited* (1990) 59 P&CR 379, a decision of Nolan J, the land owner sought a judicial review of a decision by the local authority and in those proceedings sought prohibition. The application was dismissed. That case was decided in 1989. It is worthy of note that whilst Nolan J followed the *Simpsons* case he did so in the context of an application for judicial review. It is also worthy of note that the case was not argued as a claim framed in estoppel but as a claim framed in what is now the familiar administrative law concept of legitimate expectation - see the summary of the application at 379. This is significant. When the *Simpsons* case was decided, judicial review as it is now known was unheard of. The concept of legitimate expectation was equally unheard of. *Reprotech* demonstrates the important role that the common law doctrine of estoppel has had on the development of the law of legitimate expectation. However there is nothing in the speech of Lord Evershed that requires a court in effect to ignore the existence the development of the doctrine of legitimate expectation that has occurred since that case was decided. In my judgment that much is apparent from the approach adopted in the *Blewin Trust* case.

29. Two other authorities are relied on as supporting the proposition that a land owner can seek a remedy against a local authority against a local authority exercising statutory powers in reliance upon an estoppel. The first in time is *Salvation Army Trustee Company limited v. West Yorkshire MCC* (1981) 41 P&CR 179, a decision of Woolf J as he then was. In summary the Salvation Army (***SA***) owned a hall – the old site – and the local authority wished to compulsorily purchase the site as part of a road widening scheme. SA entered into negotiation and then let a contract for the development of a new hall in reliance upon these indications. Following a local government reorganisation, the successor authority no longer wished to purchase the old hall. Woolf J held that SA was entitled to maintain a claim against the successor authority and that applying the proprietary estoppel doctrine, the local authority was obliged to buy the old hall. In considering this authority, it is important to note that Woolf J applied *Crabb v. Arun DC* [1976] Ch 179 and considered the later case of *Western Fish Products limited v. Penwith DC* (1978) 38 P&CR 7. On analysis *Crabb* is a case which was brought against the local authority in its capacity as a private owner of land and not in its capacity as a planning authority exercising statutory powers in relation to town and country planning. *Western Fish* was a land mark decision of the Court of Appeal in which the scope of estoppel in a planning law context was circumscribed. It was that authority which led the House of Lords in *Reprotech* to decide that estoppel no longer had any role to play in planning law. It is also important to note that Woolf J said that if the case had involved only the old site, he would not have regarded it as appropriate to extend the principles of proprietary estoppel so as to enforce the purchase of the old site. In my view this case does not assist on the issues that I have to decide because it does not relate to a public authority exercising a statutory power in town and country planning context but rather relates to a private arrangement made prior to the exercise of such a power. If and to the extent that this is wrong then in my judgment the case has to be read subject to and treated as impliedly overruled by *Reprotech* to the extent that it suggests an estoppel may be raised in private law proceedings in relation to the exercise of a planning law statutory discretion. *Crabbe* provides no support for Belfields case because that case had nothing to do with a local authority exercising its statutory planning law powers in the public interest.

30. The final case relied on is a decision of Lewison J in *LB of Bexley v. Maison Maurice Limited* [2006] EWHC 3192 (Ch). I do not propose to burden this judgment with a lengthy summary of this case because in my judgment it does not assist with the issues that I am now addressing. I say this because as Lewison J said at Paragraph 63 of his judgment: " *In my judgment, section 184 did not confer on the council as highway authority the power to construct a crossover over the ransom strip. In its capacity as a land owner, however, it was entitled to authorise the construction of the crossover on its own land".* It was on this basis that the Judge went on told hold that the council was estopped. In my judgment this case clearly illustrates the existence of the distinction identifiable by comparing and contrasting *Reprotech* and the cases that followed that decision on the one hand – all of

which are concerned with the exercise of statutory powers, the performance of statutory duties or the exercise of statutory discretions in the field of town and country planning – and cases such as *Crabb* and *Maison Maurice* which are concerned with the activities of local authorities in their capacity as landowners. Estoppel is available against a local authority acting in the latter capacity as it is against all land owners but not in the former capacity, where a dissatisfied land owner seeking redress must do so by reference (in factually appropriate cases) to submissions framed in legitimate expectation. This is the answer to the question posed by Mr Elleray to which I referred in paragraph 19 above concerning where the line is to be drawn between a local authority being subject to the principles of law that bind private individuals and being governed by principles of public not private law. Where the local authority is acting as a private land owner, it is subject to the same legal principles as everyone else. Where it is acting pursuant to statutory powers in its capacity as a planning authority then its activities are governed by principles of public not private law.

31. It follows in my judgment that Sefton's over arching defence to the chancery claim is one that should succeed as a matter of law and thus that the chancery proceedings ought to be dismissed. As I have said, no claim has been advanced in the chancery proceedings by reference to the asserted legitimate expectation.

32. The opinions of the House of Lords in *Yoemans Row Management Limited v. Cobbe* [2008] UKHL 55 were handed down on 30th July 2008. In light of the conclusions that I have reached concerning the estoppel issue, it is not necessary that I comment on those opinions although both parties submitted short supplemental submissions referring to them. It is worth noting that Lord Scott's opinion appears to confirm the view that proprietary estoppel can arise only in relation to land other than that in which the party alleged to have acted detrimentally has an interest. As such it is consistent with what Woolf J said in the *Salvation Army* case (ante) where he said that if the case had involved only the old site, he would not have regarded it as appropriate to extend the principles of proprietary estoppel so as to enforce the purchase of that site. This would provide a reason for concluding that proprietary estoppel is not available to Belfields in the circumstances of this case independently of the reasons identified above. However that point would not apply to the other variants of estoppel relied on and so I remain of the view that the over arching defence to the chancery proceedings succeeds for the reasons set out in the previous paragraphs of this judgment.

**Judicial review - Introduction**

33. It follows from the conclusions I have so far reached that if any relief is to be obtained by Belfields it will have to be obtained by judicial review relying on the doctrine of legitimate expectation. In relation to that application, Ms Patterson submits however that I ought to refuse permission to Belfields to bring the JR proceedings or, if I give permission then the relief sought (a quashing order) ought to be refused.

34. In relation to the permission issue, it is submitted that permission ought to be refused because (a) the JR proceedings were not started promptly and (b) in any event judicial review based upon alleged legitimate expectation is not available in town and country planning cases or at any rate is not available where a CPO has been confirmed and the statutory appeal process has been exhausted or is available only rarely. In the event that permission is granted then it is submitted that I ought to refuse the relief claimed either because on the facts of this case the conditions applicable to the existence of a legitimate expectation are not satisfied or because the legitimate expectation claimed could not survive the conclusions reached by the Inspector and/or the terms of the confirmation on behalf of the Secretary of State and/or because the council was entitled to conclude that the conditions that applied to the assurance have not been satisfied by Belfields. I turn first to the issues relied on in relation to the contention that I should refuse permission.

**Judicial review - Permission**

35. **Promptness**

By *CPR 54.5*:

> "*The claim form must be filed:*

*(a) promptly; and*

*(b) in any event not later than 3 months after the grounds to make the claim first arose"*

The judicial review proceedings commenced by Belfields were commenced 2 days before the expiry of the 3 month period. Because the test is one of promptness, the mere fact that a claim has been brought within the 3 month period may not be enough. However, it seems to me that before an application fails on this ground, normally some serious and irremediable prejudice ought to be shown to have resulted from the failure to commence proceedings within the 3 month period. Sefton's case however is simply that the chancery proceedings were brought on 22nd April 2008 and no explanation is offered as to why parallel proceedings were not commenced at the same time nor is there objectively any good reason why such proceedings were not started at that time. In any event, the nature of the overarching defence would have been apparent once the defence was served in the chancery proceedings and that was served on 12th May 2008.

35. All these points are valid. However, no specific prejudice or other detriment has been identified by Sefton as resulting from the fact that proceedings were started on 26th June as opposed to either the 22nd April or slightly after 12th May. In those circumstances, and because the proceedings were started within the default limit of 3 months, I am satisfied that the proceedings were started sufficiently promptly in the circumstances.

36. **Availability Of Judicial Review**

The other basis on which it is submitted that permission ought to be refused is because it is contended that the Claimant cannot succeed by reference to the doctrine of legitimate expectation as a matter of law.

37. The basis upon which this submission is advanced is first by reference to a submission that the clear policy of the law is that once the statutory challenges to the CPO have been completed, the law requires that there be finality. In support of this proposition, Sefton relies on *R v. Carmarthen DC ex p. Blewin Trust Limited* (ante) where Nolan J at 387 drew attention to this point. However, it seems to me that this submission misses the real point to be derived from Nolan J's judgment which in my judgment is that notwithstanding the policy identified by Nolan J, following the *Simpsons* case there could be circumstances where a challenge could be mounted by reference to what occurred after the completion of the statutory appeal process. As Nolan J said at 388 "*... I conclude that the applicant's case in law is well founded to the extent that the proposed action of the council can be reviewed on grounds of conscience...*". Thus I do not accept that there is a legislative policy which bars the application of legitimate expectation in all cases where a local authority seeks to enforce a confirmed CPO following the exhaustion of the statutory appeal process in breach of an assurance that it would not or would not providing certain conditions were satisfied (whether such assurance was given before or after confirmation of the CPO) providing that otherwise the requirements of the law relating to legitimate expectation are satisfied. If Sefton's submission was correct that would mean that even though a authority had given an assurance not to activate a CPO or not to do so providing certain conditions were met, the authority could change its mind arbitrarily or capriciously in circumstances where the recipient of the assurance had acted irretrievably in reliance upon the assurance and the recipient of the assurance would have no remedy of any sort. In my judgment, that is a wholly unsustainable proposition and is one which did not represent the law even at the time when the *Simpsons* case was decided. In my judgment this point is emphasised by the limited scope of *Section 25* of the 1981 Act which bars the questioning in court proceedings of a confirmed CPO once the statutory appeal process has been exhausted. Here the CPO is not being challenged. It is the decision to enforce it that is being challenged.

38. It is then submitted that the circumstances in which legitimate expectation could be relied on in a town and country planning case are severely restricted. In support of this proposition, reliance is placed on the statement of Keene LJ in *Henry Boot Homes v. Bassetlaw DC* (ante) at Paragraph 56, where he said:

> "*... It is possible that circumstances might arise where it is clear that there was no third party or public interest in the matter and the court might take the*

> *view that a legitimate expectation could then arise from the local planning authority's conduct or representation. But ... one suspects that such cases will be very rare. The situation which normally arises in a planning context is very different from that which obtains in cases such as Unilever where the issue is essentially one between the individual and the public body, in that case the Inland Revenue. Legitimate expectation has a far greater role to play in such circumstances".*

39. The context of what Keene LJ was saying in *Henry Boot Homes* needs to be noted – his point, which he expands upon at paragraphs 48 and following of his judgment, is that the area of planning law he was concerned with in that case was covered by statute. The issue in that case concerned the degree to which a developer could rely on work done in apparent breach of a planning condition as evidence that a development had been started. Legitimate expectation was relied on as the basis for an entitlement to rely on such activity. However, *Section 73* of the TCPA provided a procedure by which a variation or discharge of a planning condition could be applied for. Indeed, Keene LJ makes that point in the two sentences that precede the part of Paragraph 56 of his judgment relied on by Sefton quoted above, where he says: "*Mr Lowe invited us to say that legitimate expectation could never operate so as to enable the developer to begin development validly and effectively in breach of condition. I am not prepared to adopt so absolute a proposition*". That is not this case. Here, Belfields claim to rely upon an assurance which by its nature could become relevant only once the CPO had become enforceable and Sefton acted in a way that is alleged to be contrary to what is alleged to be Belfields' legitimate expectation. As Nolan J emphasised in *Carmarthen DC* (ante), once the statutory procedure for challenging a CPO has been exhausted there is no other statutory machinery available to a dissatisfied land owner. In that event, once it is accepted that estoppel is not available the only available route to redress is via reliance upon the doctrine of legitimate expectation.

40. This conclusion is not as radical and wide ranging a proposition as it might appear. The occasions and circumstances in which a local authority will provide an assurance that can be relied on by a landowner as creating a legitimate expectation but not enter into a development agreement of the sort Sefton sought to persuade Belfields to enter into immediately prior to the start of the Enquiry are likely to be very rare. Where an authority intends that the developer enter into such a development agreement it is likely that any assurance will be expressly made subject to the making of such an agreement in terms satisfactory to the authority. Aside from that, in many, perhaps most, cases, the alleged assurances are unlikely to be sufficiently clear and unambiguous or to have been made by someone with sufficient relevant authority to give rise to an assurance capable of founding a claim based on legitimate expectation in this area.

41. Finally, it was suggested that the principle that a public body cannot estop itself from discharging its statutory functions in the public interest meant that legitimate expectation could not be relied on in the circumstances of this case. I do not accept that this principle has any application to the facts of this present case. There is no statutory duty to execute a GVD – as I have emphasised above when considering the estoppel point, *Section 4* of the 1981 Act creates a statutory discretion to give effect to a CPO by executing a GVD not a statutory duty to do so. It is this factor which in my view distinguishes this case from cases such as *R v. Aggregate Industries UK Limited ex p English Nature* [2002] EWHC 908 *per* Forbes J at Paragraph 117. As the judge said in that case Aggregate Industries' only legitimate expectation was that English nature would discharge its statutory duties. That is not the position here.

42. As I have emphasised above, many of the reported cases concerning legitimate expectation fail because the claimant has failed to establish a sufficiently clear and unambiguous promise or assurance. However, the most recent decision of the Court of Appeal on what constitutes legitimate expectation - *R (Bhatt Murphy) v. The Independent Assessor* [2008] EWCA Civ. 755 – shows that once this hurdle has been discharged it is the task of the court to weigh the requirements of fairness against any over riding interest relied on for the change of policy – see Laws LJ at paragraph 32, where he cited with approval a statement of principle by Simon Brown LJ as he then was in an earlier case to the effect that once a claimant has established a clear and unambiguous representation

that it was reasonable for him to rely on then " ... *the ... public body will be held bound in fairness by the representation made unless only its promise or undertaking as to how its power would be exercised is inconsistent with the statutory duties imposed upon it. The doctrine employed is in this sense akin to estoppel*". Here it is at least arguable that a representation that satisfies the premise of Simon Brown LJ's statement of principle was made. As I have said, the assurance given in this case cannot be said to be inconsistent with a statutory duty for the reasons set out above. Thus, as Laws LJ said at Paragraph 42 of his judgment in *Bhatt Murphy*: " ... *the court will (subject to the overriding public interest) ... enforce ... where the decision maker's proposed action would otherwise be so unfair as to amount to an abuse of power by reason of the way that it has conducted itself.*".

43. In this case, having reached the conclusions I have so far expressed, it seems to me that permission to seek a judicial review is bound to be granted so that the fact sensitive issues identified by Laws LJ in *Bhatt Murphy* which I have referred to above can be resolved.

**Judicial review - The Application**

44. The first point on which Sefton relies is what it contends to be a requirement that before a party can rely on a legitimate expectation that party must be able to identify a clear and unqualified representation which it was reasonable for the recipient to rely on and which is said to be the source of the legitimate expectation. In this case as I have already mentioned, the assurance is said to be contained in the e mail from Mr Lunt which in so far as is material for present purposes was to the following effect:

> "... *the CPO will be made but will be utilised as a last resort. Therefore, if there is evidence of the owner of the site or a developer being able to progress the development of the site, in accordance with the SPG for the area, in a timely fashion, then* [Sefton] *would see no requirement in acquiring the land by compulsion, despite the potential existing to do so. Our aim is to see the land developed, not to become a land owner in the long term!*"

The first point made by Sefton (see Paragraph 18.4.1 of its Detailed grounds of Resistance and Skeleton Argument) is that the "... *representation is qualified*". I do not agree. The assurance is one that is subject to conditions but that is different. I do not regard the conditions to which the assurance is made subject preclude Belfields from being entitled to rely on the assurance if it is otherwise clear and unambiguous. A qualification which made the assurance subject to the parties entering into a development agreement (for example) would of course be different. The authority relied upon by Sefton for its submission on this point is *SSEE ex p. Begbie* [2000] 1 WLR 1115 where at 1123H-1124B Peter Gibson LJ at Paragraph (iv) of what he accepted to be an accurate summary of the applicable principles referred to "... *the making of an unambiguous and unqualified representation ...*". I do not think that Peter Gibson LJ had in mind an assurance that was subject to conditions but which was otherwise clear and unambiguous. However, in any event Peter Gibson LJ also said of such a representation that it was a "... *sufficient but not a necessary trigger of the duty to act fairly ...*". Thus, (a) the ultimate concern in this area of administrative law is the duty of a public body to act fairly (b) an unqualified statement is a sufficient but not a necessary trigger of that duty and (c) as Peter Gibson Lj observed in approving paragraph (iii) of the summary of the applicable principles "... *the categories of unfairness are not closed*". These points, coupled with the most recent statement of principle relating to legitimate expectation - given by the Court of Appeal in *Bhatt Murphy* (ante) - which refers at paragraph 32 to a requirement for a clear and unambiguous representation, in my judgment constitutes a complete answer to the suggestion that the presence of the conditions in the relevant representation will of themselves prevent reliance being placed upon the assurance to found a claim based on the assertion of a legitimate expectation. It is not anywhere suggested by Sefton (nor in my judgment could it reasonably be suggested) that the assurance was not clear and unambiguous. No issue concerning the authority of Mr Lunt to make the representation on behalf of Sefton now arises. A suggestion made at one stage in the chancery proceedings to the effect that Mr Lunt did not have authority to give the assurance was withdrawn by amendment of the Defence. It is not and could not seriously be suggested that what was said was not intended and could not reasonably be

relied on by Belfields. In my view the first element of such a claim is well established by the material before me. I accept that if the conditions were expressed in a way that gave rise to ambiguity then the position would be different. However what is required by the conditions is not in dispute between the parties. What is in dispute is whether Sefton could reasonably conclude in March 2008 that the conditions were not satisfied.

45. Ms Patterson next suggested that whatever legitimate expectation might have been created by the assurance referred to above, it could not survive the enquiry, the report of the Inspector and the confirmation of the CPO on behalf of the Secretary of State. In my view this point is misplaced as well. It is not possible for a CPO to be made subject to conditions at any rate of the sort the subject of the assurance. In any event, the assurance contemplated the making of a CPO that would not be given effect to unless the conditions set out in the assurance were not satisfied. It did not contemplate that no CPO would be made. Thus, it was not open to Belfields to object to the making of the CPO by reference to the assurance for that reason. That is why it had to contend before the inspector that it was not necessary for a CPO to be made at all because it was ready willing and able to develop the site. Sefton argued that the asserted legitimate expectation could not survive the commencement of the enquiry process because the statement of case filed by Sefton was inconsistent with the terms of the Assurance. I am not able to accept that submission. In paragraphs 7.124-7.126 of the statement of case, Sefton stated that the compulsory acquisition of the site was necessary to enable the comprehensive redevelopment of the area to proceed. That was entirely consistent with the terms of the assurance because the terms of the assurance contemplated that a CPO would be made but not enforced unless the conditions contained in the assurance were not satisfied. This fact alone explains the limited nature of what was said in the Statement of case.

46. It is then argued that effectiveness of the assurance cannot survive the conclusions reached at the public enquiry and the decision letter issued by the Secretary of State. It is submitted that a fair reading of those materials shows that whatever the position was prior to the enquiry, confirmation of the CPO was sought and granted on the basis that Sefton was not satisfied that Belfields could make or had made satisfactory progress. It is submitted that on a fair reading of the inspector's report and the decision letter the Inspector had accepted Sefton's submissions on that issue and so did the Secretary of State. Sefton's case is that the execution of the GVD is entirely consistent with the conclusions reached by the inspector and the reasoning set out the Secretary of State's decision letter.

47. I reject this submission essentially for the reasons I have already given. The issue that was the subject of the Enquiry and the Secretary of State's confirmation letter was whether the CPO should be confirmed not whether the conditions to which the assurance had been made subject had been satisfied or not or even whether a relevant assurance capable of giving rise to a legitimate expectation had been given. It was simply not an issue that concerned or which could concern either the inspector or the secretary of state. It would not have been possible to complain that the CPO did not give express effect to the assurance because it is not suggested that the estoppel or legitimate expectation relied on had the effect of preventing Sefton from making or seeking confirmation of a CPO at all but only that Sefton was precluded from giving effect to the CPO (if otherwise confirmed) save in the circumstances set out in the assurance. This being so, it seems to me that the issue I am now considering was not and could not be considered either by the Inspector or the Secretary of State or, for that matter, the Administrative Court when hearing the statutory appeal. Indeed, it seems to me that the issue that I am concerned with could only become justiciable if and when it was alleged that Sefton was seeking to give effect to the CPO otherwise than in accordance with the alleged assurance. I thus reject the suggestion that either the inspector's report or the Secretary of State's letter is to be read as justifying the activation of the confirmed CPO notwithstanding the terms of the assurance.

48. I am satisfied for the reasons set out above that the e mail from Mr Lunt constituted a clear and unambiguous representation which it was reasonable for Belfields to rely upon. There is not I think any serious dispute that Belfields has demonstrated detrimental reliance upon the representation. It is not contended that there is an overriding public

interest justifying the decision to resile from the representation. The sole issue that remains to be considered is whether Sefton is entitled to make the GVD because the conditions to which the promise was made subject have not been met. It is also necessary to consider a separate point made by reference to ECHR Article 1.

49. The first formal assertion of the point now under consideration came in a letter from the solicitors acting for Belfields dated 30th January 2008. The reason the letter was sent was a telephone conversation that had apparently taken place between those solicitors and the solicitors acting for Sefton (Eversheds) in which Belfields' solicitors had been informed that Eversheds had been instructed to proceed with a GVD. This resulted in the letter from Eversheds dated 27th March 2008. In so far as is material, that letter reads as follows:

> *"... A GVD has already been served in respect of an area to the south of your client's property and it is now the intention of our clients to serve a GVD which will have the effect of vesting land comprising your client's site ... so that the process of regeneration can progress. ... rest assured that in reaching its decision to vest the land, our client has taken into account the various comments which have been made on behalf of yours about the appropriateness of that course of action. Both we and they have concluded however that it is entirely appropriate that the GVD should be issued. We say this for a number of reasons:*
>
> 1. *The need to progress ... and achieve the regeneration of the Klondyke area as swiftly as possible is well documented in all the evidence which has been produced in response to your client's challenge. We do not propose to repeat what has already been said. Suffice to say that past events have already resulted in a significant delay in the regeneration scheme and those delays cannot be allowed to continue.*
> 2. *We note the suggestion you made in your letter of 30th January that discussions which have taken place in the past about the potential for your client to redevelop its site outwith the CPO have in some way estopped our client from now progressing the compulsory purchase scheme. Quite apart from the fact that the comments you attribute to Mr Lunt have been taken entirely out of context, it is self evident that the position which the council has taken in relation to the potential for development of this site has been fully aired in the challenge proceedings and out client's approach has been fully upheld. So too has its right to compulsorily purchase your client's site. In those circumstances, we reject entirely any suggestion that the discussions which have taken place previously could prevent that course of action.*
> 3. *One of the factors which has led our client to conclude that the GVD should now be issued is that in the case of ... this site ... a detailed process of site investigation will need to be carried out before the land can be prepared for development and work commenced. Our client has obtained advice ... as to what site investigations ought to be undertaken and a copy of that report is enclosed. It is clear from the document that any site investigations which have already occurred are inadequate and considerably preparatory work must be undertaken before any development can commence. Our client is unwilling to delay these preparations any longer."*

In summary the immediate execution of a GVD was said to be justified by reference to three factors:

49.1. Delay caused by past events;

49.2. The confirmation of the CPO trumped the assurance; and

49.3. The site investigation work required was as set out in the consultant's report attached to the letter, the site investigations carried out by Belfields to date are not satisfactory and Sefton was unwilling to delay the necessary preparatory work any longer.

50. Of these, I reject the second for the reasons that I have already given. As to the first and third, in my judgment they could only justify a departure from the previous assurance if

either they or one or other of them meant that any of the conditions that attached to the assurance was no longer satisfied. I turn to those issues next. However, given my conclusions concerning the second of the reasons relied on, it follows that the reasoning which led to the making of the decision to issue a GVD was at least in part unsupportable. It is at least arguable that this in truth was what led to the decision to execute the GVD. On 20th July 2007 (after confirmation of the CPO by the Secretary of State) NatWest, Belfields' bankers, wrote to the Defendant asking for information as to how the CPO was to likely to be progressed from Sefton's perspective. The response to the bank's enquiry is dated 6th August 2007. In so far as is material, the response (which was signed by Mr Clay, Sefton's HMRI Programme manager) said:

> *"Your client has made a challenge to the CPO which we intend to contest. ...*
>
> *If the Council is successful in the High Court in resisting such challenges, the Council will be seeking to vest the property in itself as soon thereafter as is reasonably practical. This will involve making a vesting order ... one might reasonably expect, therefore, that the site will be vested around 6 weeks from the High Court decision"*

It is asserted on behalf of Belfields that this information was never passed on by the bank to Belfields or Mr John Costello. I accept there is no evidence before me that suggests it was. On 24th January 2008, the question of the enforcement of the CPOs was considered by Sefton's cabinet. The minute of this meeting says that the cabinet considered a report from the Housing Market renewal Director " *... which provided details of the High Court decision in respect of the challenges to the Secretary of State's confirmation of the ...* " CPO. That report has never been produced. The cabinet then resolved that the High Court's dismissal of the challenges be noted and "*... the actions of the officers to execute General Vesting Declarations and Notices to Treat/Notices of Entry as a means of acquiring all remaining outstanding interests within the CPO boundary be noted.*". In my judgment this suggests very strongly (a) that the decision to execute the GVD relating to the site was not taken in March 2008 but no later than 24th January 2008 and (b) that the decision was taken by reference to the dismissal of Belfields' statutory appeal not by reference to a conclusion that the conditions to which the assurance had been made subject were not being or were not capable of being satisfied. In addition, aside from Eversheds' letter, there is nothing which suggests that this approach had been recognised as flawed and that the issue had been approached afresh by reference to the assurance.

51. In my judgment the effect of the assurance is that it is for Sefton to judge whether the conditions are being complied with or not subject to the point that a decision that one of the conditions has not been satisfied would be challengeable on the basis that such a decision is *Wednesbury* unreasonable or that such a decision had been arrived by failing to take account of a factor which ought to have been considered or by reference to a factor that ought not to have been considered. I am also satisfied that the time relevant for the purpose of considering these issues is the point at which Sefton decided to issue a GVD. When this was is entirely unclear.

52. I now turn to the two conditions which Sefton say Belfields have not complied or are incapable of complying with - that is the deliverability condition (*being able to progress the development of the site*) and the timeliness condition ("*in a timely fashion*"). I preface my conclusions in relation to these issues by noting that at no stage prior to the taking of the decision did Sefton seek information from Belfields as to its ability to comply with the conditions, nor did it seek evidence from Belfields of its ability to comply with the conditions (notwithstanding that the conditionality of the assurance is framed by reference to there being "*evidence of*" the conditions being satisfied). Indeed no notice of any sort was given by Sefton to Belfields prior to the letter from Eversheds to Belfields' solicitors by which time the decision had been taken. The consequence of this is that the explanations that have been put forward on behalf of Belfields in these proceedings have not been investigated or tested. It is questionable whether it could be said to be reasonable for a local authority to act in this fashion. It also provides further support for the implication that in reality Sefton considered that following confirmation of the CPO by the Secretary of State, it was able to proceed without regard to the assurance. In my judgment that alone would justify quashing the decision.

53. I turn first to deliverability. The point made here by the local authority in the letter refers to delays to the regeneration scheme. No attempt has been made in the letter to attribute the delay it is alleged has occurred to Belfields not being able to progress the development of the site. In my view if that was what was alleged then Eversheds letter should have said so as to give Belfields a proper opportunity to provide evidence relevant to that allegation.

54. At the hearing before me, Sefton placed great reliance on the fact that no developer had been signed up as it was put as a joint venturer with Belfields for the development of the site. Sefton relies on the fact that the Inspector identified this as a source of uncertainty at paragraph 348 of his report and Sefton assert that the position has not altered materially since then. In answer to this point, Belfields make four points – the absence of a final agreement with a house builder has not prevented the claimant from pursuing its development to date, will not prevent its development in the future and extensive interest has been shown by developers in the project. This last point is demonstrated on the material before me as it was at the Enquiry. Even if all of that is wrong, it is asserted that Belfields could develop the site itself. The main point that is made however is that all this is premature – it is only if the stage has been reached where Belfields cannot get the support of a developer or the funding to develop that it can be said that it cannot progress the development of the site and it is only if the point is reached at which it becomes apparent that the development cannot for these reasons be completed within the timing for Sefton's scheme taken as a whole that it can be said that Belfields cannot develop the site timeously. I agree.

55. Although Sefton express scepticism about the ability of Belfields to develop the site itself, It is to be noted that Belfields have produced a letter from Yorkshire Bank dated 10th June 2008 in which the Bank confirms that "*whilst no formal development appraisal has been submitted by Belfields Limited, I confirm that the Bank has an appetite to assist with the finance requirement to allow the development of the site*". The letter goes on that "*prior to any formal agreement to development finance being advanced, the Bank has already confirmed a loan facility of £1.25 million to Belfields...*". The Bank commissioned a valuation report by Savills who reported in September 2007. That report valued the site at that stage and in the state it was then in at in excess of £4 million and that the gross development value of the site if development was completed in accordance with Belfields planning permissions would be just short of £24 million. That being so, it cannot be said that Belfields point that if no developer can be found, it could develop the site itself is plainly wrong. The local authority suggests that the company has no track record. That is so, but that point fails to take account of the fact that the company has retained the services of very experienced architects and also will be able to retain contractors to build out the project.

56. Sefton complained in the course of their submissions that the Savills report was not made available to Sefton in March 2008. Even assuming that the relevant decision was taken then, in my judgment Sefton has no basis for making such a complaint – this would be a point available to them only if they had written to Belfields before taking the decision to proceed with the execution of a GVD indicating their concern in relation to the point now under consideration. Similar considerations apply to Sefton's point that the Yorkshire bank letter came into existence after March 2008 – so it might have but there is no evidence that it would not have been forthcoming then if Sefton had made enquiries of the sort I refer to above by reference to this issue. The fact that the Savills report is dated in September 2007 suggests that the position would have been the same in March 2008 as it was in June when the Yorkshire Bank letter was written. The assertions by Sefton that it was not under an obligation to make enquiries and that Glassbrooks (Belfields' solicitors) did not set out the position in a letter to the authority are not points available to Sefton in my view. It is true that this particular point was not addressed in Glassbrooks' letter of 30th January. What Mr Glassbrook did do was to refer to the assurance and then say "*You are aware that our clients have well developed plans for the site and have continued to make progress to date*". It was at that stage, if Sefton had been concerned about compliance with the conditions that they should have set out in a letter what their concerns were in a way that gave Belfields a fair opportunity to respond before a decision was taken.

57. The next point made is that there are not sufficient funds available to Belfields to carry out what is referred to as "remediation" by which is meant the decontamination of the site. There is a major dispute between the parties concerning what is required concerning decontamination. There is no doubt that if Belfields and their decontamination experts are correct then they have the funds available to carry out the work required. If and to the extent that the scheme required is that which Sefton considers is necessary, then more funding will be required but the correspondence from Yorkshire Bank when read with the Savills report does not enable me to conclude that the necessary funding will not be made available. It is not open to Sefton to say as was submitted at the hearing before me that it did not know if funding would be available – for the relevant question was not asked. In any event the dispute between Sefton and Belfields concerning the scope of the decontamination scheme required has yet to be resolved and it is not for the court in the context of judicial review proceedings to resolve that dispute. There are statutory processes by which that dispute can be resolved. Nor it is open to Sefton to rely on delay caused by this dispute. Much of the delay attributable to this element is the result of a failure by Sefton to take a decision in relation to Belfields' proposed scheme. The proposed strategy was delivered to Sefton in September 2007. If there was a dispute then Sefton had to serve a decision notice refusing reserved matters approval. This did not happen for a period of 6 months until April 2008. I do not consider that it is open to Sefton to say that the failure by Belfields to accede to its demands concerning the remediation scheme evidences either a failure or inability to progress or do so in a timely way. Belfields position is one that has apparently been adopted on the advice of consultants (Amec) of the highest repute. It cannot be said that what Belfields contend would be reasonable is not at least arguably so. It may be that some delay will occur as a result of having to resolve this dispute. However, that is implicit and arises from the nature of the assurance that was given.

58. The other factor which Sefton rely upon as evidence of a failure to progress or progress in a timely fashion concerns a failure on the part of Belfields to hold relevant discussions with Sefton's preferred registered social landlord provider. This issue is I suspect the real issue between the parties. The outline planning permission by reference to which Belfields desire to develop the site contained a condition to the effect that 30% of the dwellings would be made available as rented accommodation in the first instance. The reserved matters approval was issued on 18th April 2006. It requires that the development must be begun by no later than April 2009. Condition 17 went further than condition 14 of the outline planning permission by requiring the 30% of dwellings there referred to be made available for re-housing residents from the Klondike estate. On 7th February 2007, an application for the removal of Condition 17 from the approval of reserved matters was made and by an approval notice dated 2nd April 2007 it removed condition 17 from the approval of reserved matters. It will be recalled that the Inspector's report was issued in February 2007 and confirmation was given on behalf of the Secretary of State in May 2007. Belfields claim the reason why they rejected the development agreement and issued a unilateral S.106 undertaking was because Sefton attempted to include with the development agreement a requirement which gave effect to Condition 17.

59. Sefton's case is that even with the removal of Condition 17, Belfields' development is still subject to a requirement that 30% of the accommodation must be made available for rented accommodation. This is not in dispute. There is no evidence that Belfields intend to proceed on any other basis. This was no doubt what led Ms Patterson to assert that either or both of the conditions of the assurance now under consideration had not been or were not capable of being complied with because of a failure on the part of Belfields to consult with Sefton's preferred social landlord. Ms Patterson sought to develop this theme by asserting that the condition in the planning permission on proper construction could only mean what it would have said had the missing words that Sefton tried to reintroduced had appeared therein. There are a number of difficulties about this approach. For present purposes however, it seems to me that this allegation had not been put to Belfields prior to the decision being taken to execute the GVD so that Sefton had no idea what if any answer there was to the point. In any event it seems to me that if such an argument was to be made it could not be advanced on the material before me by reference to the two conditions relied on by Sefton. If the point is to be deployed at all, it seems to me that it would have to be deployed by reference to the SPG condition which

is not relied on by Sefton in these proceedings. Even if all that I have said so far is wrong, there is no evidence that the absence of contact constitutes an absence of evidence that Belfields has not complied or will not comply with either the deliverability or timeliness conditions.

60. **The Article 1 Point**

Finally I should mention a discrete submission made on behalf of Belfields that the decision to execute a GVD in relation to the site constituted a breach of Belfields' rights under Article 1 to the first protocol of ECHR (***Article 1***). In common with most of the rights enshrined in ECHR the Article 1 right is not absolute but is qualified. The right of a legal person (Belfields) not to be deprived of its possessions (the site) is qualified by a reference to the public interest in the first paragraph of the Article and is subject to the proviso in the second paragraph that the right referred to in the first paragraph does not impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. There is no doubt that Article 1 is engaged in a case such as this and contrary to the submissions made on behalf of Sefton, I do not accept that the issue was resolved once and for all by the decisions made by the High Court when deciding the statutory appeal. The statutory appeal was concerned with the question whether the CPO should be confirmed. Different issues may (though not necessarily will) arise when the decision is taken to give effect to a CPO by executing GVDs.

61. I agree with the submission made on behalf of Belfields by reference to the statement of principle made by Maurice Kay LJ in *R (Clay Land Housing Coop) v. The Housing Group* [2005] 1 WLR 2229 that the application of Article 1 requires a balancing exercise by reason of the points made in the previous paragraph of this judgment and that a decision has to be justified on the basis of a compelling case in the public interest and as being reasonably necessary. In my judgment the application of Article 1 so understood would yield no different outcome in the circumstances of this case. A compelling case in the public interest would be demonstrable as would reasonably necessity if either it could be shown that there was some overwhelming reason for departing from the assurance previously given or if could be shown that the conditions to which the assurance had been made subject had not been or could not be complied with at the date when the decision was taken. A decision to execute a GVD in the absence of either would in my judgment preclude the justification of the compulsory purchase of the site. In my view this would be all the more the case if as has been alleged by Sefton, the value of the site has dramatically reduced as a result of the clearance of the various buildings from the site as part of the carrying into effect of the development in reliance upon the assurances given.

**Judicial Review - Conclusions**

62. In the end in my judgment Sefton were bound by fairness to act in accordance with the assurance contained in the e mail from Mr Lunt of 6th July 2005. In my judgment that document contained a clear and unambiguous statement that was intended to be and was in fact acted upon by Belfields to its detriment. Fairness required that Sefton continue to give effect to that assurance and in my judgment Sefton have failed to do so. In my judgment the decision to proceed with the GVD in relation to the site was driven by a belief that following the completion of the statutory appeal process, Sefton could proceed to enforce without further ado. My reasons for reaching this view are set out above. At best that view was in my judgment mistaken and by forming that view and acting upon it, Sefton failed to act fairly towards Belfields by failing to give effect to the assurance that had been given. In any event, even if this conclusion is wrong and Sefton re-decided the question or decided the question with the terms of the assurance in mind, in my view Sefton failed to give proper effect to the assurance that it had given because it did not draw to Belfields' attention that it was considering making a GVD because it did not believe the conditions to the assurance relied on by Sefton had been or were capable of being complied with and giving Belfields a reasonable opportunity to respond and supply evidence and other material or otherwise answer that allegation. Further, I do not consider that the facts and matters relied on by Sefton as showing that the conditions had been or were not capable of being complied with demonstrate that to be so either individually or collectively at any rate on the material currently available. No overriding justification has been advanced for departing from the promise previously made. Having

regard to the substantial expenditure incurred by Belfields and other efforts deployed by it in seeking to bring its development to fruition in reliance upon an assurance which was sought at the outset for the purpose of avoiding expenditure that would otherwise be wasted in combination with the absence any overriding justification for departing from what had been promised previously and the absence of material from which in my view it could properly be inferred either that Belfields were incapable of delivering the development at all or were incapable of delivering in timeously means that the decision to issue the GVDs cannot be allowed to stand. Provisionally, it seems to me that a quashing order will have to be made but I agreed that I would defer coming to a final conclusion concerning remedies until the parties had an opportunity to see this judgment in draft.

63. This decision is no bar to Sefton continuing to monitor Belfields' performance, and if it concludes, having given Belfields a fair opportunity to respond, that any of the conditions to which the assurance was made subject are not being or cannot be satisfied then nothing that I have said in this judgment constitutes a bar to the local authority proceeding to execute new GVDs. I would add that Mr Elleray fairly accepted this to be so in the course of his submissions as he also accepted, correctly in my judgment, that Belfields could not expect a better outcome in relation to its estoppel claim that could be obtained from its judicial review claim. The basis for these concessions was Mr Elleray's acceptance, again correctly made in my judgment, that in deciding to proceed on the basis of the assurance, Belfields did so taking the risk that in the future Sefton would decide that one or other of the conditions would not be or could not be complied with on grounds that were not assailable and that in consequence Sefton would exercise what in the end I have concluded it intended should be its reserve power to compulsorily purchase the site.

ooooooOOOOOOooooooo