Neutral Citation Number: [2020] EWHC 2526 (Ch)

Case No: PT/2018/000426

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 01/10/2020

Before :

MR MICHAEL GREEN QC

(sitting as a Deputy Judge of the Chancery Division)

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Between :

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT	**Claimant**
- and -	
(1) LEONARD JOHNSON (claiming to be a TRUSTEE of HARLESDEN PEOPLES COMMUNITY COUNCIL) **(2) STONEBRIDGE COMMUNITY TRUST (HPCC) LIMITED** **(3) HER MAJESTY'S ATTORNEY-GENERAL**	**Defendants**

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Katharine Holland QC and Admas Habteslasie (instructed by **Bevan Brittan LLP**) for the **Claimant**
Stephen Cottle (instructed by **Hogan Lovells**) for the **First and Second Defendants**
The Third Defendant did not appear and was not represented

Hearing dates: 21-24, 27-30 July 2020

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Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and other websites. The date and time for hand-down is deemed to be 10am on 1 October 2020

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.

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MR MICHAEL GREEN QC

MR MICHAEL GREEN QC :

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A. ABBREVIATIONS AND DEFINITIONS

1. In this Judgment I will use the following abbreviations and definitions:

Attorney General	The Third Defendant
Brent; or **the Council**	The Claimant
Bridge Park; or **the Property;** or **the Site**	The land on the south west side of Brentfield, Stonebridge, NW10 ORG; registered under title no: NGL426015

CLSA	Conditional Land Sale Agreement dated 14 June 2017 between Brent, SRED, GMH and Harborough Invest Inc, by which part of the Site was to be bought by SRED, the other part to be retained by Brent.
December 1981 Report	A Report entitled "*Stonebridge Bus Depot Project Report*" prepared by the Steering Group together with support from Brent for the purposes of progressing the acquisition of Bridge Park
The Defendants	The First and Second Defendants
DofE	The Department of the Environment
GLC	Greater London Council
GMH	General Mediterranean Holdings SA, the owner of an adjoining site to the Property
HPCC	Harlesden Peoples Community Council, an unincorporated association formed in 1981 principally by Mr Johnson, who was, and claims still to be, its Chair
Mr Johnson	Mr Leonard Johnson, the First Defendant; the founder of HPCC and claiming to be the Chair and a trustee of HPCC
LTE	London Transport Executive, former freehold owners of the Property, which was a Bus Depot
PRC	The Policy and Resources Committee of Brent
Project	The acquisition of Bridge Park followed by its development and management as a community and leisure centre being run by and on behalf of the local community

SCT	The Second Defendant, a company incorporated on 16 March 2018 and claiming to be the transferee of interests that HPCC owned in the Property
SRED	Stonebridge Real Estate Development Limited, a company that is part of the GMH Group.
Steering Group	A Group set up for the purposes of progressing the acquisition of Bridge Park and made up of HPCC members together with other community representatives and Brent Councillors
Steering Group Company	HPCC Bus Garage Project Steering Group Limited, a company incorporated on 21 January 1983

B. INTRODUCTION AND BACKGROUND

2. The Bridge Park Community Centre was a remarkable concept, the brainchild of Mr Leonard Johnson, the First Defendant, and the organisation that he founded, the Harlesden Peoples Community Council (**HPCC**). The vision in 1981 was to establish a centre in the London Borough of Brent that was owned and managed by the local black community for themselves, not beholden to anyone else, and which, by its very nature, would empower that community and would prevent unrest, principally by its disaffected youth, from becoming violent, leading to riots similar to those that had taken place in Brixton and Toxteth at that time. Brent was the most ethnically diverse borough in the country and it was feared that there would be similar riots to those that had taken place elsewhere. But Mr Johnson and the creation of Bridge Park were a massive factor in ensuring that Brent did not suffer in the same way.

3. Bridge Park was an old LTE Bus Depot and Mr Johnson and HPCC identified the site and determinedly pursued its acquisition as a place where they could realise their philosophy of providing a space where the local community could establish themselves and grow and succeed by their own efforts, without interference from outside.

4. However, as a fledgling organisation without any financial resources, HPCC was in no position to purchase the Site. They had to involve the Council, together with central government and the GLC in order for there to be any chance of the Site being acquired. As it turned out, Brent acquired the site from LTE on 5 May 1982 for £1.8 million and legal title was transferred into Brent's name.

5. As explained in more detail below, the purchase consideration was made up by a number of grants from the DofE and the GLC, with the balance, an agreed amount of £834,500, being paid by Brent itself. The Defendants say that the grant monies were

only obtained because of the involvement of HPCC and were earmarked for the project and so should be considered to be contributions to the purchase price made by HPCC. In other words, they say that a substantial part of the purchase price was paid by or on behalf of HPCC and that therefore Brent held Bridge Park on resulting trust for HPCC in proportion to its contribution. The Defendants alternatively claim beneficial interests in Bridge Park on the basis of constructive trust, proprietary and promissory estoppel and/or estoppel by convention. They also maintain that Bridge Park was bought for charitable purposes and has always therefore been held by Brent on a charitable trust. That is why the Attorney General was joined to the proceedings but the Attorney General has indicated that she adopts a neutral position on whether Bridge Park is held on a charitable trust.

6. The reason why the Defendants are maintaining these claims against Brent's title to Bridge Park is because they object to what Brent wishes now to do with the Site. After successfully developing and operating Bridge Park through the Steering Group Company during the 1980s, the early 1990s saw the beginning of its demise. Whilst the reasons for this are contested, possession proceedings were commenced by Brent in 1992 and by 1995 Brent had taken over control of Bridge Park and it was managed directly by Brent since then. Over the years it has fallen into disrepair and it is proving very expensive for Brent to run.

7. Brent has therefore sought to formulate plans as to what to do with the Site. Following a local consultation in 2013 at which various options were put to the local community, Brent decided to pursue the possibility of building a newly enhanced leisure and community facility that would incorporate a swimming pool. However, in order to fund this redevelopment, Brent decided to sell part of the Site to an adjoining landowner, GMH, and entered into the CLSA on 14 June 2017.

8. The Defendants do not wish to see the Site, acquired through their efforts and for the fulfilment of the project, sold off and for Brent to be able to "*profit*" from Bridge Park. Brent denies that it would profit from the sale and says that it is necessary to sell part of the Site in order to be able to fund the newly enhanced leisure facility which will be for the benefit of the whole of the local community, including HPCC. On 18 August 2017, Mr Johnson made an application for a restriction to be entered against Brent's title to Bridge Park and it is that application that has led to these proceedings in which Brent seeks a declaration that it is the sole legal and beneficial owner of Bridge Park.

9. As I said during the course of the trial, I must decide the case according to law and by reference to quite well-defined legal principles governing interests in land, including whether a charitable trust of the Site could be created in the circumstances of this case. Proprietary rights in land are not recognised on the grounds of morality or sympathy; they are founded largely on rules of equity in relation to which there needs to be a reasonable degree of certainty, so that title to land is not unduly affected by unknown and unregistered interests. As such, I doubt that my judgment on those issues will resolve the differences and grievances that appear unfortunately to have prevented this matter from being settled out of court.

10. To my mind, it became clear, during the hearing of this case, that there has been some confusion as to what is meant by "ownership". Both parties are claiming ownership of the Property. But hearing the Defendants' witnesses in particular, it seems to me that the ownership they envisaged, before the acquisition of the Property, was more related

to the project, to their vision and to the concept, rather than actual legal ownership of the Property itself. For Bridge Park to succeed, and that meant, at least initially, to avoid civil unrest in the area, it was critically important that this was not just another Brent-owned property in which HPCC would be effectively working for Brent. It had to be theirs, the local community's, in the sense that they had complete autonomy to run it and to create what they wanted with it but also that they would have responsibility for its success or failure. If it had been a success (as it was for a while) and became self-financing, that may have led to HPCC being in a position to buy out Brent's freehold title, in which eventuality their ownership could have been said to be complete. But I do not believe that they, or anyone, truly believed that they owned the Property in a legal sense; nor that that was essential in order to realise the concept of a community devised and managed centre that they hoped one day to own in its entirety.

11. The Defendants' defence changed markedly during the trial and it eventually led to an application during closing submissions to re-re-amend the Defence – an application that I will have to consider as part of this judgment. The core change is a move away from the Defendants' central allegation that representations were made by Brent before the Property was acquired that the freehold would be transferred to HPCC or the Steering Group Company. Instead, the Defendants now wish to allege that what was represented at that time by Brent was that HPCC, or a community co-operative to be set up by HPCC, would be granted a lease of the Property which would contain an option to acquire the freehold from Brent. That is quite a substantial factual shift of position but it is fair to say that it was foreshadowed to a certain extent in Mr Johnson's fourth witness statement dated 9 June 2020 and Mr Stephen Cottle, appearing for the Defendants, cross-examined Brent's witnesses on that basis. I will of course have to assess the credibility of the Defendants' witnesses in the light of that change of case and also consider whether any such representation or assurance in those circumstances actually gives rise to a beneficial interest in the Property.

C. RELIEF SOUGHT AND MAIN ISSUES

12. The relief sought by Brent is fairly straightforward and it is as follows:

    (1) As stated above, a declaration that Brent is the sole legal and beneficial owner of the Property; and

    (2) An order restraining the registration of any restriction upon the Property's registered title in favour of either or both of the Defendants.

13. There is no counterclaim by the Defendants, for instance, for a declaration as to their alleged beneficial interests in the Property. By their defence to these proceedings they simply assert that Brent should not be entitled to the declaration that it seeks. They also say that an injunction on the terms of paragraph (2) would be wholly disproportionate and that, if anything, Brent should have applied for an order directing the Land Registrar not to enter any such restriction against Brent's title.

14. The pleadings disclose the following broad issues that require to be determined, and I will deal with them in this order:

(1) The standing or *locus* of the Defendants to apply to register a restriction against the Property (the **Standing Issue**);

(2) Whether the Property is held on some form of resulting trust for either of the Defendants (the **Resulting Trust Issue**);

(3) Whether the Property is held on some form of constructive trust for either of the Defendants (the **Constructive Trust Issue**);

(4) Whether the doctrine of proprietary estoppel gives rise to a beneficial interest in the Property held by either of the Defendants (the **Proprietary Estoppel Issue**);

(5) Whether either of the Defendants have a beneficial interest in the Property pursuant to the principles of promissory estoppel or estoppel by convention (the **Alternative Estoppels Issue**);

(6) Whether the Property is held on any form of charitable trust (the **Charitable Trust Issue**);

(7) Whether, and if so what, relief is appropriate in the circumstances of the findings made in this judgment (the **Appropriate Relief**).

D. THE WITNESSES

(a) Introduction

15. The events relevant to the above issues largely took place nearly 40 years ago in the early 1980s. The witnesses who were involved at the time cannot be expected to remember any of the detail and they would not have looked back at the contemporaneous documents save for the purposes and in the context of preparing for this case. While they would have a general impression as to what happened then, they cannot possibly recollect actual words spoken or representations made, even where there is some form of documentary record of what was said. The general impression that they have would have been shaped by the passage of time and events which have happened since. While this was certainly a momentous occasion, particularly for Mr Johnson and the HPCC, which in broad terms they would probably remember, the details of what was actually said will inevitably have been affected by the claims they are now making and by what they want to achieve. That is not to say that they are not telling the truth; it is more that their memory is an inherently unreliable guide to the truth.

16. A major piece of contemporary documentary evidence is entitled "*Stonebridge Bus Depot Project Report*" which was prepared in December 1981 (**December 1981 Report**) by the Steering Group which was largely Mr Johnson and HPCC together with members of the Council and in particular with the assistance of Mr Richard Gutch, the then Policy Coordinator of Brent and who gave evidence for the Defendants. The Preface to the Report was signed by Mr Thomas Bryson, the then leader of the Council. The Report lays out in very clear terms the vision for the Site, the funding required and how it was all intended to work. As will be explained in more detail below, I believe

that the witnesses' recollections of what was said and done prior to the acquisition must be tested by reference to this Report.

17. There is also a fair amount of other contemporaneous documentary material from that time, principally internal Council reports and minutes, and correspondence between Brent and central government or the GLC. This would obviously not have been seen at the time by Mr Johnson and HPCC but it does reflect what the Council was doing, how it viewed the project and what it had agreed in such respect. I believe, and the Defendants accept, that seeing this documentation through the litigation process has caused the Defendants to re-evaluate what they thought had happened and what was represented to them. This brought about the change of case referred to above.

18. Accordingly, but recognising that this is not commercial litigation in the sense being considered by Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse* [2013] EWHC 3560 (Comm), I bear in mind the oft-quoted but valuable guidance on assessing witnesses' evidence based on recollection, in particular the following:

> "18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.
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> 19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side of the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.
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> 22. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

19. The Claimant's witnesses were all from the Council, whether as employees or Council members, and mainly from the 1980s and 1990s. While they all therefore had ties of loyalty, they are not so strong now, but I consider that there would still be a strong desire on their part to portray themselves as having acted properly and fairly at the material time and not to have committed the Council to anything that might be considered beyond their respective authority.

20. With the exception of Mr Gutch (and also possibly Ms Bertha Joseph), the Defendants' witnesses were very involved in HPCC and were and remain passionate about the Bridge Park project. Their overwhelming driving factor in giving evidence is to stop Brent selling off and profiting from what they see as their Property, as a place which should be returned to the "*community*" without which it would never have been created in the first place. They simply cannot abide by the notion that Brent could unilaterally destroy their legacy and maybe even profit from it. As I said above, I consider Mr Gutch to be in a somewhat different category, not because he does not passionately support the Defendants (he does) but because he was very involved at the time of the acquisition but for the other side. The biases referred to by Leggatt J are weaker for him and his recollections, based, as they inevitably were, on an interpretation of the contemporaneous documents, may therefore be more reliable.

21. I will assess the main witnesses' evidence in a little more detail. The trial was conducted in hybrid fashion during the Covid-19 pandemic restrictions which meant that: some witnesses gave evidence in court; others gave evidence remotely by video-link using Skype for Business; and two of the witnesses had to give evidence on the telephone. I identify the method of taking each of their evidence below.

(b) Brent's witnesses

22. Brent called the following witnesses (in the order in which they were called) and my general assessment of each is dealt with below:

(1) Ms Marsha Henry;

(2) Mr Thomas Bryson;

(3) Ms Carolyn Downs;

(4) Mr Arthur Boulter;

(5) Ms Merle Abbott;

(6) Ms Meredith Thompson;

(7) Mr George Benham;

(8) Mr Charles Wood;

(9) Lord Michael Bichard.

23. (1) Ms Marsha Henry

Ms Marsha Henry is the Principal Property, Planning and Regeneration Lawyer in Brent's Legal Department. Ms Henry gave evidence in court. She had prepared witness statements for earlier applications and Brent was not proposing to call her to give evidence. However, the Defendants wished to cross-examine her, although it is difficult to see why that was necessary. She had no relevant contemporaneous knowledge and Brent's current Chief Executive was being called anyway to explain the Council's intentions in respect of the Property.

24. (2) Mr Thomas Bryson

Mr Thomas Bryson was the Leader of the Council from 1981 to 1982, that is during the time of the acquisition. He gave evidence remotely using his mobile phone from Spain and there were a few technical problems. I found him to be a credible and honest witness who actually gave an interesting interpretation as to the role Brent played in relation to grant monies received in respect of the Urban Aid programme, describing it as a "*conduit*" of the monies to HPCC. That was contrary to Brent's position and what some of its other witnesses said. He was also fulsome in his praise of what HPCC did and achieved and said that he viewed the relationship between Brent and HPCC as a "*partnership*"; he said that neither Brent nor HPCC could have done this on their own. He was nevertheless clear that Brent owned the Property and he was aware that the long-term aim of HPCC may have been to own the Property but that this was not discussed after the December 1981 Report had been prepared.

25. (3) Ms Carolyn Downs

Ms Carolyn Downs is and has been since 2015 the Chief Executive of Brent. She gave evidence in person in court. Her witness statement and evidence were predominantly adduced to deal with the Council's current proposals for the Property and how they got to the CLSA. As such it is not particularly relevant to the issues that I have to decide but it explains the backdrop to the present dispute. I found Ms Downs to be a little over defensive of the Council's position although it is understandable that she, having formulated a detailed strategy for redeveloping the Site, would not be best pleased with having to spend the Council's limited resources in having to deal with this litigation. Her main point was that the Council has to serve the whole community and she believes that the proposed redevelopment, including the CLSA, would be in the best interests of the community as it is now, rather than what it was in the 1980s. I have no doubt that this is her genuine belief and accept that she is acting honestly and reasonably as Chief Executive to implement the Council's considered policy in relation to the Site. Ms Downs also had experience in relation to Urban Aid grants from her time as Chief Executive of the Local Government Association and at Haringey Council and, while she was not called as an expert, it is appropriate to record that she was quite firm in her insistence that the Council would not have been acting as a "*conduit*", as Mr Bryson said, in respect of such grant monies and that the way such grants worked was that they were paid to the Council for specific projects.

26. (4) Mr Arthur Boulter

Mr Arthur Boulter was Director of Finance for Brent from 1973 to 1985. Mr Boulter gave evidence on the telephone. Despite that, I feel that I got quite a good impression

of him. Remarkably he is 91 years old and sounded completely lucid and *compos mentis*. He was very adamant in his recollection of events of 40 years ago, particularly in his insistence that the grant moneys were always paid to the Council and were thereafter totally within its control. In my view he went too far in this and unfairly minimised the necessary involvement of HPCC in getting the funding for the acquisition and development of the Property.

27. (5) Ms Merle Abbott

Ms Merle Abbott (nee Amory) was the Leader of the Council between 1986 and 1987, having been first elected as a Councillor for Stonebridge Ward in 1981 and Deputy Leader from 1982. Ms Abbott gave evidence remotely on video. She was called principally to answer an allegation in the then Re-Amended Defence that she had told Mr Johnson and other members of HPCC in 1982 that Brent "*intended to give HPCC the freehold*" of the Property. In her witness statements, she said that she had no recollection of saying anything like this and that she would not have done so given her position at the time. As it turned out, Mr Cottle did not cross-examine her on that allegation but instead put what appeared to be the Defendants' changed case, namely the promise of a lease with an option to acquire the freehold. This Ms Abbott also denied although she fairly did not dispute that the work and enthusiasm of Mr Johnson and the HPCC was crucial in obtaining the funding for the project. I unhesitatingly accept Ms Abbott's evidence as credible and truthful.

28. (6) Ms Meredith Thompson

Ms Meredith Thompson was the Senior Solicitor employed by the Council between 1 August 1989 and around 1 November 2000. She gave evidence in person in court. Ms Thompson's main involvement was therefore in relation to the various proceedings in the 1990s concerned with Brent's recovery of possession of the Property and the sums of money it had paid to banks as guarantor for the Steering Group Company. Not all of the documentation is available now in respect of those proceedings and Ms Thompson was careful to point out that her recollections as to those events were wholly dependent on the documentation that is to hand. She was not involved in any discussions about the grant of a lease. However, in an affidavit from those proceedings in the 1990s, Ms Thompson said on instructions: "*It was the Plaintiff's intention to grant the Defendant a long lease of the whole of the premises but negotiations never reached fruition for a variety of reasons including the Defendant's desire to have an option to purchase included in the lease. The Plaintiff had no objection in principle to this but consents were required from the Department of the Environment and from the London Residuary Body, which held a charge over the property.*" She had prepared very thoroughly for her cross-examination and was patently honest. But in the end there was little of relevance in her evidence that could not be gleaned from the documents and I could not see the point of her being cross-examined.

29. (7) Mr George Benham

Mr George Benham was the Chief Executive of Brent from 1995 to July 1999. He gave evidence remotely by video. His involvement with Bridge Park came towards the end of the repossession process in 1995 and he described the difficulties they had in such respect and in deciding what to do with the Site once it was fully back under the Council's control. He gave his evidence in a straightforward manner and I have no

reason to disbelieve any of what he said about this time. He maintained that he never heard of anyone other than Brent having an interest in the Property and that he would be surprised if any of his predecessors would have made such a representation. Nevertheless, because of his later involvement, like with Ms Thompson, I did not think that his evidence really assisted with the matters in dispute.

30. (8) Mr Charles Wood

Mr Charles Wood was the Chief Executive of Brent from 1986 to 1995. He gave evidence remotely by video from the Caribbean working with electronic bundles. Mr Wood had a tendency to give very long answers at great speed and to jump to answers to questions that had not yet been asked. He also struck me as being quite combative, probably as he was effectively being accused, by Mr Johnson in particular, of having unfairly and wrongly cut off the funding of Bridge Park by Brent, and of generally bringing about the end of HPCC's involvement with it. Mr Wood denied this vehemently and, in any event, it was accepted by Mr Cottle on behalf of the Defendants that I am not being asked to determine whose fault it was that the project demised in the early 1990s. Despite his manner of giving evidence, what he said largely accorded with the contemporaneous documentation and with the undisputed facts and I mostly accept it. I deal with particular aspects of his evidence below, in particular the discussions about a lease and the enforceability of a covenant given to the GLC in relation to the £700,000 grant.

31. (9) Lord Michael Bichard

Lord Bichard was Chief Executive of Brent at the very material time between 1980 and 1986. He gave evidence remotely by video. I found him to be reasonable and considered. He understood that, because of the sensitive time in the 1980s and the prime aim of avoiding there being any riots in Brent, the Bridge Park project had to be "*owned*" by the local community and it would not work if this was simply another Council-run property. I believe he showed genuine support for the project at the time and he was highly impressed with, and complimentary of, Mr Johnson and HPCC in their approach to the project and realisation of their vision. He agreed with the statements in the December 1981 Report to the effect that it was intended that a lease of the Property would be granted to a community co-operative set up by HPCC and that if the project became self-financing, that co-operative may have been able at some point in the future to buy the Property back from Brent. He described this as an "*aspiration*" for HPCC. He disagreed with Mr Bryson that the Council was merely a "*conduit*" for the grant monies to HPCC but he accepted that the grant monies would not have been paid without HPCC's involvement. He also agreed that, so far as he could recollect, Brent would have had no objection in principle and, if the project was sustainable, to a buy-back of the freehold but he could not remember there being any talk of an option being granted to such effect. More reference will be made below to parts of Lord Bichard's evidence but at this stage I say that his evidence was credible and clearly honestly given.

(c) Defendants' witnesses

32. The Defendants called the following witnesses (in the order in which they were called) and my general assessment of each is dealt with below

(1) Ms Kathleen Lindsay Fraser-Jackson;

(2) Mr Leonard Johnson;

(3) Mr Paul Anderson;

(4) Ms Bertha Joseph;

(5) Mr Richard Gutch.

33. (1) Ms Kathleen Fraser-Jackson

Ms Kathleen Fraser-Jackson was a Brent Councillor representing St Raphael's Estate ward which was about 10 minutes walk from the Property. She was first elected in 1986 and she thereafter served as one of the Council's representatives on the board of the Steering Group Company. Unfortunately, she had to give evidence on the telephone which made it a little difficult to assess. While she was clearly devoted to the Bridge Park project and was proud of HPCC's achievements, I found some of her answers to be overly aggressive and she had a tendency not to answer the question she was asked, instead making points that she seemed to think the questions were directed at. In any event, she admitted that she was not involved in any of the discussions leading up to the acquisition and she generally learnt of HPCC's successes from reading newspaper reports. It appears that she was on the board of the Steering Group Company only between 1986 and 1988 and that in that time no progress was made in terms of agreeing a lease of the Property.

34. (2) Mr Leonard Johnson

Mr Johnson is the First Defendant and the main witness for the Defendants. I did not think that he would be giving evidence in person as he had been shielding during the lockdown of the Covid-19 pandemic. However, he was able to give evidence in court and I had the benefit of hearing him in person. He was cross-examined for one and a half days.

35. My general assessment of Mr Johnson and his evidence is that he is highly intelligent, charismatic with many leadership qualities and obviously passionate about his creation and realisation of the Bridge Park project. Unfortunately, he has suffered serious ill-health over the years and this led to him not being involved with Bridge Park from the early 1990s, coinciding with the time when Brent was taking steps to repossess the Property. He only became re-involved in recent years when he heard about the plans that Brent had for Bridge Park and he has been determined to fight to protect both the concept and legacy for the community and to prevent Brent from profiting from what he considers always to have been owned by the community. I have no doubt that he genuinely believes that in some way, probably not in a legal sense, that HPCC "*owns*" Bridge Park but the attempt to define that ownership so as to found a legal claim to an interest in Bridge Park has affected the way he now views the events of the early 1980s.

36. As referred to above, the Defendants' case on the pleadings coming into this trial was that Brent always held Bridge Park on trust for HPCC and that certain individuals had represented to Mr Johnson that it would be transferred to HPCC. When the documents were reviewed, including the December 1981 Report which was largely prepared by Mr Johnson, and it was realised that they could not support such a contention, Mr Johnson has changed his recollection of the facts and now asserts that a lease with an option to purchase the freehold is what was promised to HPCC by the Council. This is a significant change of position and rather undermines the foundation of any of Mr Johnson's memory of specific things that were said to him in the 1980s.

37. There was also an awkward moment in his cross-examination when he was completely thrown by his own Defence (to which he had signed a Statement of Truth) which alleged that Mr Johnson should not have been a party to these proceedings because "Mr Johnson is a [sic] simply a *member* only and not a *trustee* [of HPCC]". He admitted that this was not correct and that he remained Chairman and a trustee of HPCC. He also surprisingly asserted during cross-examination that there was a written constitution for HPCC, even though none had been produced on disclosure. He was asked to see if he could find a copy but none was produced by the end of the trial. (Something had been given to Mr Cottle early in the trial but it turned out that this had been in the disclosure and, in any event, was a "*constitution*" for the Steering Group Company.) To my mind this approach to his evidence, including signing Statements of Truth, indicates that Mr Johnson was prepared to assert matters that supported his case at the time but then abandon them when they no longer suited his position.

38. So while there is no doubt of his great qualities, I feel I have to be cautious about accepting his evidence as to events of nearly 40 years ago, where his recollection differs from or does not fit with the contemporaneous documentation. While it is true to say that internal Council reports and minutes may not record accurately or fully what had been said by Council officials to third parties, I have to decide on a balance of probabilities what was actually said and promised and the documents and prevailing circumstances are a better guide to that than Mr Johnson's (or any other witnesses') recollections. I therefore follow the approach in such respect adopted by Leggatt J in the *Gestmin* case (supra).

39. (3) <u>Mr Paul Anderson</u>

Mr Anderson grew up in the Stonebridge Park area and saw the creation of Bridge Park. He became an IT expert and was involved in setting up an IT Centre within Bridge Park. He gave evidence in person. Mr Anderson was likeable and showed passionate support for Mr Johnson and relayed his memory of the implementation of the Bridge Park concept. However, Mr Anderson was not involved at the time of the acquisition of Bridge Park; nor did he participate in discussions about the grant of a lease. All he could properly give evidence on was the importance of Bridge Park as a symbol of pride and achievement of the local community. I found that his evidence exemplified the sense of ownership that the local community had in Bridge Park but it was of the project, the idea, the vision, the management and the delivery of it, not the actual ownership of the Site. I do not believe that he ever considered the question of the legal ownership of the Property. He also said that he thought that there was a written constitution for HPCC but he too was unable to produce a copy.

40. (4) Ms Bertha Joseph

Ms Bertha Joseph became a Councillor in Brent in May 1986 and remained so for some 24 years. She gave evidence in person in court. Like Ms Fraser-Jackson, Ms Joseph was not involved at the time of the acquisition though she was aware of Mr Johnson and HPCC and their influence in preventing any riots in Brent. The timings in her witness statement were shown to be wrong – she said that at a "*Group meeting Councillor Merl Amory [ie Ms Abbott] who was the Leader of the Council at the time informed us that the HPCC were planning to buy the Bus Garage*…", whereas Ms Abbott only became leader and Ms Joseph a Councillor in 1986, four years after the acquisition. She also gave evidence that she was a Council board member of the Steering Group Company yet had no idea who legally owned Bridge Park. I therefore did not find her evidence of much assistance and in any event her evidence was not relevant to the issues I have to decide.

41. (5) Mr Richard Gutch

Mr Richard Gutch was employed by the Council between 1980 and May 1985, initially as Policy Coordinator, and then from 1984 as Assistant to the Chief Executive who at that time was Lord Bichard. Mr Gutch gave evidence remotely by video. I found Mr Gutch to be a clear and eloquent witness who was prepared to amend his evidence once he had seen documents and other evidence that showed that his previous recollection had been wrong. This was a sensible recognition of what I have said above about the immense difficulties of accurate and reliable recollection of words spoken or events after 40 odd years. While strongly supporting the Defendants, Mr Gutch realistically accepted that Brent owned the Property, even though Mr Johnson and HPCC had a strong aspiration to buy it back at some point. Furthermore, he agreed that Urban Aid grant money went to the Council to be used for specific projects. Mr Gutch was very involved with the drafting of the December 1981 Report and he accepted that the project could only have gone ahead with HPCC being properly constituted and that it could only have been in a position to buy back Bridge Park from Brent if the project had been sustainable and generating enough income to give it the resources needed to buy it back. All in all, I find Mr Gutch to be an honest and credible witness.

E. DETAILED FACTS

42. With those general comments on the witness evidence, I now turn to the detailed facts, deriving from the contemporaneous documents and the witness evidence that I find to be accurate.

(a) The founding of HPCC

43. In the early 1980s, Brent was the most ethnically diverse borough in London. The area known as Stonebridge is on the edge of Harlesden and it largely comprised a 1960s high-rise estate housing some 7,000 people, of which at the time, 70% were black. There were virtually no community or leisure facilities, unemployment was high,

particularly among the youth, and expectations as to the future were generally low, leading to a large amount of crime and general deprivation.

44. Mr Johnson was from the estate and had, in his early years, gone down the criminal route and ended up in prison. He came out in 1980 and was determined to bring about change both personally (he did not want to go back to prison) and for the area by providing facilities for its disaffected youth. There was a Council-owned youth centre known as the Annexe but this was severely underfunded, with minimal facilities, and therefore under-used. Mr Johnson became involved in organising a weekly Friday night disco at the Annexe and these immediately proved to be very popular. Mr Johnson says that this was because the discos were being organised by the community for the community and there was no involvement of the Council.

45. The success of the weekly discos led Mr Johnson, together with a number of other individuals including Mr Osbourne Gilbert, Mr Lawrence Fearon and Mr Errol Williams, to look at other ways to bring about change among the local black community and to steer the young people of Stonebridge away from crime and violence. They expanded the activities at the Annexe to include a Sunday school, educational classes in maths and English and sessions on drama, electronics and black history. The Annexe became a hub for community activities such as festivals, competitions and a place where business opportunities could be fostered. All of the activities were made possible by volunteers from the local community and there was no input from the Council.

46. As things progressed, Mr Johnson and his colleagues felt that there should be some structure and cohesion to hold things together and they decided to establish HPCC. Initially there were 7 members of HPCC who were elected by those members of the community who were using the Annexe. They were: Mr Johnson, Mr Fearon, Mr Williams, Ms Juliet Simpson, Mr Donavan Grant, Mr Stephen Simpson and Mr Louis Miles. Mr Johnson was elected as the Chairman.

47. Mr Johnson said in his witness statement that HPCC was not a "*formalised organisation, however we were clear that we represented the interests of the black and African and Caribbean community in Stonebridge*." In the December 1981 Report a statement from HPCC was included in which the following was said:

> "[HPCC] has no written Constitution, no written rules, no formal system of membership and has not adopted many of the bureaucratic forms of administration which prevail in Britain today. Instead the form of the HPCC has been fashioned by the people it exists to represent and it reflects their own conventions, modes of communication, attitudes, values and beliefs.
>
> By pursuing this line of development the HPCC intends to maintain the integrity of its relationships with those it represents. The HPCC does not seek to be recognised and adopted by other organisations and authorities as being an authority in its own right. Rather, the HPCC is pursuing the recognition and acceptance of the inalienable rights of those who elected it in line with the principles on which it is based."

48. It seems that HPCC was specifically set up as an unincorporated association without any formal structure so as to distinguish it from other organisations and to make it accessible and capable of operating in and for the benefit of the local black community.

Despite that relatively clear contemporaneous record of HPCC's structure, Mr Johnson insisted, as did Mr Anderson, that there was a written constitution, although none has been produced to me. It would be unusual, in my view, that Brent, the GLC and central Government would have been content to deal with HPCC without it having an accountable structure but it may be that it was necessary to take the risk of accepting HPCC as it was in order to achieve the greater prize of avoiding riots in Brent. The likelihood is, in my view, that there was not, at the time, any written constitution for HPCC.

49. There was another local community centre called the Hilltop Club but this was not used by the black community. Mr Johnson and the newly formed HPCC approached the management of the Hilltop Club to see if they would be prepared to provide access to their premises for office facilities for HPCC and also to use the space there for mothers and toddlers, dance classes, stage shows, fitness programs, church services, senior citizens social activities and a disco on Sundays.

50. The context for HPCC establishing itself in the community was the countrywide breakdown of relations between the black community and the authorities including the police. The Brixton riots were in April 1981 and there were further riots in the summer in Toxteth, Liverpool and Tottenham in London. There were extremely heightened tensions among disaffected black youths and there was no doubt, among all the witnesses from both sides that I heard from, that Mr Johnson and HPCC's efforts and vision were absolutely critical in avoiding riots taking place in Brent. They began by meeting regularly with the police and slowly a mutual trust and respect developed with the police. Mr Johnson's guiding philosophy was that if local people were invested in and proud of their community they would be much less likely to damage it through crime.

51. The relevant background is probably best expressed in Mr Johnson's Foreword to the December 1981 Report which says as follows:

> "Stonebridge is a 1960's high-rise estate on the edge of Harlesden in the London Borough of Brent. Over 7,000 people live there. About 70% of these are black; white people are a minority. Unemployment, especially amongst young blacks is high. Community tension is high. Crime is high. There are virtually no community facilities. Stonebridge is a time bomb ticking away.
>
> After the Brixton riots in April 1981 the Leader of Brent Council met with local Council officers to discuss what to do to take the heat out of Stonebridge. A number of short term measures, including a programme of activities based at the local school during the Summer Holidays were agreed. A major worry to everyone at the meeting was the lack of community spirit and the lack of local leadership in the Stonebridge area.
>
> During the next few months a series of remarkable events took place. In other parts of the country a series of riots took place. A riot very nearly took place in Stonebridge but a group of young blacks decided there was a better alternative. We decided to take matters into our own hands. Rather than destroy Stonebridge we decided to try and make it a better place to live in. We formed the Harlesden People's Community Council. We organised local events. We helped with the Summer Holiday Programme. We started developing ideas for our own

> employment co-operatives. But we had no base suited to these activities. Some of our activities, like the Discos we organised, disturbed other residents and ended up creating even more tension in the community."

52. Mr Johnson and HPCC were trying to create a different narrative for the Stonebridge estate so that it would not suffer the same fate as elsewhere in the country. Mr Johnson and HPCC were very influenced by the experience of Ted Watkins, a charismatic black community leader who had built a successful social enterprise in Watts, Los Angeles in the wake of the riots there in 1965. Mr Watkins visited the UK around this time and met with Mr Johnson and HPCC members and gave an inspirational talk at the Hill Top club emphasising the power of change and the need for self-determination of the local community. (In 1984 Mr Watkins invited some members of HPCC and Mr Gutch on a study tour to Watts in order to learn from his project there.)

53. Mr Johnson's and HPCC's progressive activities came to the attention of the Council. In particular, the Council was obviously impressed with the fact that they had managed to defuse any potential rioting in the area. They however were very reluctant to allow the Council to become involved in what they were doing and considered that, if it became another Council-run project, it would lose all credibility within the community. Nevertheless, Councillor Neal was very keen to meet with HPCC but Mr Johnson insisted that any such meeting should take place at the Annexe on their terms and that it should be a meeting that was open to the local community. The meeting did take place and over 300 members of the local community attended. Mr Johnson said that Lord Bichard attended (he could not remember whether he attended that meeting but agreed that he did attend meetings at that time with Mr Johnson and members of the community) together with Councillor Neal, Mr Bob Lacy, then Leader of the Council, and Ms Abbott. It was around this time that Mr Johnson and HPCC heard that LTE were looking to sell a disused bus depot that was situated close to the Stonebridge Estate.

(b) <u>Steps leading to the acquisition of Bridge Park</u>

54. The Stonebridge Bus Depot comprised a 3.5 acre site on the edge of the Stonebridge estate. The former LTE offices on the Site were in good condition and the huge empty depot had potential to provide space for a wide range of activities including sports, workshops and training facilities. In or around July 1981 when LTE decided to put the Site up for sale, a local Methodist minister, the Reverend David Haslam, convened a public meeting to discuss the possibility of the Bus Depot being used for community purposes. Mr Johnson and HPCC immediately saw its potential to further their own ambitious plans for a community run centre and Reverend Haslam and other community groups agreed that HPCC should take the lead in a campaign to acquire the Bus Depot for community use.

55. In September 1981 there was a meeting between Brent and Mr Johnson and other HPCC members, which, according to Mr Gutch, was attended by Mr Bryson, the then Council leader and Lord Bichard, the Chief Executive. At the meeting, HPCC asked Brent to support the acquisition of the Bus Depot and to help realise their plans. It was anticipated then that the Bus Depot's selling price would be around £2 million. Brent recognised the important role Mr Johnson and HPCC had played within the local community and quelling the possibility of any rioting and were therefore keen to

explore this project further. They arranged a further meeting with LTE and the GLC, which took place shortly thereafter.

56. The meeting with LTE and the GLC was attended by Mr Johnson and other HPCC members together with Ken Livingstone, the then leader of the GLC, Lord Bichard, Mr Bryson and Mr Gutch. It was at this meeting that it was said that the LTE agreed to take the Property off the market until March 1982, ie for 6 months, so that HPCC and Brent could sort out their fundraising and complete a feasibility study as to the viability of the project. Everyone concerned was very keen that this should go ahead as they appreciated that what Mr Johnson and HPCC had achieved so far in Stonebridge was quite exceptional and that it was important to sustain that momentum and to keep the community engaged in the project.

57. As to LTE taking the Property off the market, it appears that this may not be quite right. Originally Mr Gutch had said this in his witness statement, agreeing with what Mr Johnson had said. But in his evidence in chief he very fairly corrected his witness statement because he had now seen certain documents that showed that this was not correct. His evidence was therefore that the LTE had agreed at that September 1981 meeting not to sell the Property until the end of March 1982, a period that would allow HPCC and Brent to formulate how it could be converted into a community facility and how the project was to be run and funded. He agreed that LTE did not agree to take the Property off the market. An internal LTE memorandum dated 24 March 1982 indicated that in addition to Brent's offer of £1.8 million, LTE had received 16 other conditional offers for the Property, the top one being in a sum of £3.126 million from a developer intending to convert the Property into offices (which was conditional on planning permission being obtained and this was thought to be difficult). It is therefore fairly clear that the Property had not been taken off the market during that period.

58. It was also quite a large part of the Defendants' case, emphasised by Mr Johnson in his evidence, that he had persuaded LTE to accept their below-market offer of £1.8 million, instead of the much higher £3 million offer that it had received, because of the efforts of HPCC and the political support and pressure that was applied. However, the internal LTE documentation that I have seen do not support that notion. Instead it shows that LTE accepted the offer of £1.8 million as the best market price offer taking into account other issues, in particular the planning status of the Property. In a letter dated 11 March 1982 from LTE to the GLC, LTE said that Brent would not get preferential treatment:

> "I confirm that the way appears to be clear for negotiations, but of course they must be on a sensible and realistic basis. We shall not reach agreement if Brent are seeking to buy the property below the market price…
>
> As you know, and as I am sure that you will agree, we have a duty to obtain full open market value, taking into account any reasonable expectations for development."

In an internal LTE memorandum dated 25 March 1982, it was stated:

> "Because of the special community/political interest it is likely that London Transport will have to sell to the London Borough of Brent, but this should only be done at market value. In other words the pressures which are causing London

> Transport to treat with Brent should not be allowed also to depress the basis upon which the price is to be assessed."

59. The internal memorandum of 24 March 1982 (referred to above) also indicated that the GLC would be unlikely to approve development of the Property for office use. Accordingly, the high conditional offer of £3.126 million would not be likely to proceed because of the difficulties of obtaining the requisite planning permission. The Report concluded that Brent's offer is the "*best offer*" because it is not dependent on obtaining planning permission and the recommendation was:

> "Having regard to the uncertainties surrounding the possibility of obtaining planning, [sic] I do not recommend acceptance of the highest offer. I, therefore, recommend acceptance of the offer from Brent Council…"

60. Tracking back to 13 October 1981, Brent's PRC met on that day and in its Report to the Council, they refer to the fact that they had been addressed by Mr Johnson in relation to the proposal to acquire the Property. The Report states as follows (underlining added):

> "At our meeting on 1st July, we discussed the situation at Stonebridge and approved a number of short term initiatives for improving conditions for local residents. We expressed our thanks to all those involved in the Summer Projects in particular, those who participated in them from within the community in Stonebridge. The five year Management Plan before us, outlined longer term proposals for the Stonebridge area and in addition we considered a report upon proposals for community use of the vacant Stonebridge Park Bus Depot.
>
> A number of representatives from the Harlesden Peoples Community Council attended our meeting and a report prepared by them entitled "The Realities of Life in Stonebridge" has been circulated to Members of the Committee.
>
> The Chairman of the HPCC Mr Leonard Johnson addressed our meeting, explaining to us the background to the setting up of the HPCC, its aims and its hopes for the future. <u>He stressed the importance to the community in Stonebridge of the Council's acquiring the Stonebridge Bus Garage for community use</u> and the report prepared by the HPCC outlined some suggested uses for the premises. Chief Inspector Kerry, Police Community Liaison Officer, also addressed our meeting and advised us that the police have supported the HPCC in their efforts to create a better way of life in Stonebridge and in their campaign to purchase the garage. We expressed our thanks to Leonard Johnson and the supporters of the HPCC for the work they have so far undertaken and in particular, for their efforts in averting disturbances in the Stonebridge area during recent months.
>
> <u>We unanimously RECOMMEND that the Council should make every effort to acquire the Stonebridge Bus Garage premises and asked that a detailed feasibility study and financial appraisal be undertaken as a matter of urgency.</u>
>
> The financial viability of such a scheme depends crucially upon the attitude of the GLC and we agreed that discussions with them should continue at the highest level and that they be requested to instruct London Transport not to dispose of or commit the future of the Bus Depot in any way until the feasibility study is complete. In

> this respect we agreed that two representatives of the HPCC should attend a Member level meeting with the GLC, together with our Chairman and the Leader of the Minority Party.
>
> We agreed that a Steering Group be established to consist of representatives of the HPCC, the Stonebridge Forum, six Council Members (four from the Majority Party and two from the Minority Party) officers and representatives of the GLC, this group to report back to our committee with detailed proposals, costings etc. The Steering Group should also give priority to meeting the needs of black youth in the Stonebridge area although scope for meeting the needs of other groups must also be considered. It should also explore possible sources of funding from other public agencies and in addition, some form of arrangement with the private sector."

61. This was Brent's green light to proceed with the acquisition. It only refers to an acquisition by the Council. The Steering Group was set up and its first priority was to prepare the feasibility report envisaged above. This eventually became the December 1981 Report, setting out the Steering Group's vision and ideas for the project. Mr Gutch was deployed by Lord Bichard to assist the Steering Group in drafting the December 1981 Report and that involved him meeting with their representatives weekly. He describes vividly in his witness statement how he gained their trust after their initial suspicions which he did mainly by allowing HPCC to articulate their own experiences and concerns and their plans for addressing and organising the project. He learnt quickly that the only way this would succeed was by empowering the community to do it for themselves and that it was necessary that this was not, and not seen as, just another Council initiative.

62. The December 1981 Report is an inspiring document which I understand built on an earlier HPCC document called "*the Realities of Life in Stonebridge*" (referred to in the 13 October 1981 Report above). It combines an emotional vision for the Site and the project with detailed costings and financial projections, such that one can see after all these years why it was so influential and attractive to those that were needed to support the project. Perhaps even more importantly it provides an historical record of what the terms and basis of the acquisition were and generally how the future was viewed by the Steering Group and HPCC. The credibility of the oral evidence has to be tested by reference to the December 1981 Report.

63. Some important passages from the December 1981 Report are set out below (with underlining added). Mr Johnson's Foreword concluded as follows (other passages are quoted above):

> "The Bus Depot project is based on the philosophy of community self-help and co-operative enterprise. But the project must have outside help as well.
>
> This is a unique opportunity. <u>Unless the Bus Depot is bought for community purposes</u> by 31st March 1981, London Transport will sell it on the open market. Unless the new community spirit that has emerged in Stonebridge over the last few months is given practical support and encouragement it could die. Far worse, it will become frustrated."

64. The Preface to the December 1981 Report is important. It was signed by Mr Bryson as Leader of Brent Council.

> "This report outlines a project proposal to use the vacant Stonebridge Bus Depot for community purposes. The proposal is that Brent Council, with assistance from other agencies, should buy the Bus Depot and Harlesden People's Community Council should then establish a Community Co-operative to manage it. Local enterprises, training workshops and leisure and social activities would be based at the Depot.
>
> The report sets down the essence of the project. Many of the proposals in it require further discussion and development both within the local community and with outside experts. Meanwhile the report stands as a declaration of intent by the people of Stonebridge and as a request for financial assistance.
>
> Brent Council has given all party support to the proposal. Likewise local police, local churchleaders, the local Member of Parliament and the local Member of the European Parliament have all welcomed this initiative. But declarations of support do not buy Bus Depots worth more than a million pounds nor do they help establish local enterprises or provide training for unemployed blacks.
>
> The long term aim of the project is that it should become self-financing and that the Community Co-operative should buy the Bus Depot back from Brent Council. In the short term the project must have an injection of hard cash. This is needed first to help Brent Council buy the Bus Depot from London Transport for the community and secondly to help the Community Co-operative establish all the activities described in this report at the Bus Depot.
>
> The Bus Depot could cost as much as £2M. This money must be found by March 1982 or London Transport will sell the Bus Depot on the open market. A further £1.1M capital investment is required for conversion work and equipment, while over £½M is required in revenue support.
>
> I know these are large sums of money in the current financial climate. Equally I hope all those reading this report will agree that this is a project that we cannot afford to let fail."

The clearly stated plan there set out was for Brent Council to purchase the Site "*with assistance from other agencies*" and then for a "*Community Co-operative*" to be set up by HPCC to manage the project. If it became self-financing, then the community co-operative hoped to be able to "*buy the Bus Depot back from Brent Council*". There is no mention here, or anywhere in the Report, of an option being granted to HPCC or the community co-operative to purchase the freehold from Brent Council.

65. More detail as to the function of the proposed community co-operative, called "CC" in the Report, and the relationship with Brent was provided in the body of the Report:

> "3.4 THE FUNCTION OF THE COMMUNITY CO-OPERATIVE (CC)
>
> The CC would have control over the running of the Bus Depot Project. It is proposed that Brent Council purchases the Bus Depot with assistance from other agencies and then leases the Depot to the CC. At the beginning of the Project the CC would require grant assistance with its rental payments to Brent Council but as the CC succeeded in generating income this assistance would be reduced. One of

the CC's objectives would be eventually to purchase the freehold from Brent Council. The CC would seek grant and other forms of assistance from a wide range of bodies.

…

3.5 SAFEGUARDS

…

Brent Council would not have any representatives on the Management Committee of the CC although councillors would have non-voting observer status if they wished. The Council would have control as representatives of the community of Brent through its funding powers and the powers it would retain under the lease or loans to the CC. In particular, the lease could provide Brent Council with the powers to intervene in the event of the CC radically departing from its stated aims and objectives."

…

4.1 INTRODUCTION [to the Costs section]

One of the eventual aims of the Project will be to become self-supporting. However, clearly it will be some years before this aim can be realised…

The Project costs will take a variety of different forms and, in the first instance, will be incurred either by Brent Council, the Community Co-operative (the CC) or individual member co-operatives or tenants. Each of these bodies will however be receiving income through its activities or grant aid from other bodies to help pay these costs. For example, Brent Council will be looking in particular to the Greater London Council, Central Government and the European Economic Community to assist with the initial acquisition cost of the Bus Depot. Then over a period of years it will receive rental payments from the CC and perhaps ultimately payment for the freehold.

Similarly the CC will be receiving rental payments and a percentage of profits from individual member co-operatives, as well as rental from tenants and grants from other agencies. It is estimated that after five years this income will be sufficient to enable the CC to pay for its own running costs.

…

4.2 ACQUISITION COST

The cost of acquiring the premises will depend partly on the planning requirements laid down for the site and partly on the likely demand for the site from other purchasers. Brent Council has indicated that if it is unable to purchase the Bus Depot for community purposes then some form of office, or industrial/warehousing use would be acceptable from a planning point of view. Interest is being shown by a number of developers in the site. It would clearly be wrong to prejudice negotiations in any way at this stage. However, it is considered that a sum of £2M should be allowed to cover the acquisition cost of the Bus Depot although it is

> hoped to buy it for considerably less. Brent Council's share of this sum and the consequent debt charges it will incur will be dependent on the extent of assistance the Council obtains from other agencies."

66. Despite the clear statements in the December 1981 Report that Brent was to acquire the Site with financial support from other agencies and that it would then lease the Site to the newly formed community co-operative which may be in a position at some point in the future to buy the freehold from Brent, Mr Johnson adamantly maintained that this interpretation would amount to the local community simply managing Bridge Park on behalf of the Council. He said that the words "*for the use of the community*" or "*for community purposes*" show that it was never intended that Brent should own the Property outright and that it was only because of HPCC's involvement that Brent was able to acquire it and for the price that it did. While I understand the sentiments behind his evidence in this respect, in particular the fact that the project would not have succeeded if HPCC felt that they were simply working for the Council, in my view the words of the December 1981 Report leave little room for doubt that the Property would be acquired by Brent but that it would be managed by the community co-operative which would receive all the income generated and might eventually become self-financing. Such an interpretation is not inconsistent with the local community believing that it "*owned*" the project and was not working for the Council.

67. A Joint Report No. 15/82 of Brent's Chief Executive (Lord Bichard), Director of Finance (Mr Boulter), Director of Development (Mr Beckett) and Director of Law and Administration (Mr Forster) dated 9 February 1982 was presented to the PRC. This contains a detailed discussion of the practicalities of implementing the project including the financial implications and the potential sources of funding. The following are relevant extracts from it (underlining added):

> "Summary
>
> Following Policy and Resources Committee's agreement in principle last October to obtain the Stonebridge Park Bus Depot for community use and the subsequent publication of a Bus Depot Project Report by a Steering Group of local community representatives and local councillors, this report outlines for members the financial and other implications of the Project for the Council. The report reviews the costings and management arrangements in the Project Report and assesses the likely sources of funding for the Project, including the likely contribution required from the Council. The report also discusses alternative land use options for the Bus Depot site and alternative ways of meeting the needs of Stonebridge and surrounding areas. It is recommended that the Council purchases the Bus Depot provided financial assistance is forthcoming from the Department of Environment and the GLC. If other agencies do not provide funding to assist with the conversion and running costs of the activities planned for the Main Shed and ancillary rooms, it is recommended either that the Council disposes of this part of the site for industrial redevelopment, but retains the two-storey office block for community purposes, or that the Council disposes of the whole site and finds alternative accommodation elsewhere in Stonebridge and surrounding areas for some of the activities outlined in the Project Report."

68. The report referred to the proposed community co-operative, including the possibility of obtaining charitable status, and in particular its constitution:

> "3.2 The Community Co-operative's Constitution
>
> 3.2.1 The HPCC propose to establish a Community Co-operative which will be responsible (through a Management Committee) for the overall management of the Project (see page 10 of the Project Report). It is not being proposed that the HPCC in its current form would manage the Project.
>
> 3.2.2 A constitution for the Community Co-operative is now being prepared which will
>
> (1) make clear that membership is open to all residents of the Stonebridge estate and the surrounding areas of Harlesden, Willesden, Kensal rise and Wembley and to members of individual co-operatives to be based at the Depot
>
> (2) set down the aims and objectives of the Project.
>
> As part of the process of working out this constitution and developing other aspects of the Project ten members of the HPCC have recently attended a three day residential course on co-operative development in Leeds at their own expense (approximately £400)."

69. In section 4 of the report, the various agencies from which Brent may be able to obtain funding both for the acquisition and for the development and management of the project were set out. These included the GLC, the DofE in relation to Urban Aid and the Department of Industry. The section concluded as follows:

> "4.4.4 Generally, the financial position of the Project after five years will depend crucially on the extent to which the activities at the Bus Depot have brought in income. The aim of the Project is to become self-financing in the long term. At this stage it is not possible to say when or if this aim will be achieved. Therefore, it must be accepted that the Council could be approached for additional revenue funding after five years."

70. After setting out alternative uses for the Site if it proved impossible to implement the project, in the last section of the report, the recommended strategy for Brent was proposed. Included in that was the following:

> "7.1.5 If the DOE and GLC support the Project, then it is recommended that the Council proceeds with purchasing the Bus Depot and grants both the Community Co-operative and the Brent Black Music Co-operative a licence to use the two storey office block as soon as possible. However, before granting the CC a lease for the whole site, it is recommended that the Council establishes more clearly the level of funding forthcoming from other agencies. It should also be satisfied that the CC is a properly constituted body.
>
> 7.1.6 By the summer, the Council should be in a position to decide –
>
> (1) whether to grant a lease for the whole site to the CC
>
> or (2) whether to dispose of 2 acres of the site for industrial development (see 5.2)

or (3) whether to dispose of the whole site for industrial development"

71. If Brent was considering alternative uses for the Site, including a possible sale of it, that can only have been on the basis that Brent was to acquire the Site and to own it. Furthermore, even though this was clearly the aim, it appears to have been up to Brent to decide when and if a lease would be granted to the newly formed community co-operative. Again there is no mention of any option to purchase the freehold.

72. The project received significant support from all quarters including in particular the GLC and central government. The Minister for Local Government, Lord Bellwin, and the Minister responsible for the Urban Programme, who was also a local MP, Sir George Young, were enthusiastic advocates for the project. As an example of the support of Lord Bellwin, he wrote a letter dated 2 March 1982 to a local resident who was concerned about the project in the following terms:

> "I note your misgivings about this scheme. However when I received the deputation from Brent Council, it was made very clear to me that the project had complete bipartisan support on the Council and would continue, whatever the outcome of the May election. It was also clear that the proposals for the bus garage represented a spontaneous initiative from the local community to alleviate tensions, frustrations and employment problems, in an area of high deprivation, with a large concentration of ethnic minorities.
>
> The Council are convinced the fact that the area remained quiet at the time of last year's riots, was the result of the determination of local community leaders to direct energies into positive efforts to get the area improved, as well as the Council's own policies of concentrating resources there. They are understandably most anxious not to lose the momentum created by these efforts. In all the circumstances, I felt that this was a project which deserved to be supported, while making it absolutely clear that they must obtain funds from as wide a range of sources, public and private, as possible. I have also stressed that my support will depend on realistic management arrangements being devised, to minimise the risk that the ratepayers will be called on to bear an unreasonably large burden."

(c) <u>The Acquisition including sources of funding</u>

73. The Report 35/82 of the Chief Executive dated 31 March 1982 confirmed that contracts had been exchanged with LTE for the purchase of the Property at a price of £1.8 million. A completion date of 5 May 1982 had been agreed and a deposit of £1 million had been paid. The Report recommended that the PRC:

> "(1) Confirm the action taken regarding the acquisition of the Stonebridge Bus Depot and authorisation of the necessary finance.
>
> (2) Agree to a temporary licence being granted to HPCC on part of the Bus Depot premises, as soon as the sale of the Depot is completed and subject to satisfactory security and insurance arrangements being made."

The latter recommendation was as a result of the community co-operative not having yet been established. As the report records (underlining added):

> "2.2 Work on developing the constitution for the Community Co-operative and the management arrangements for the Bus Depot is in hand. Having satisfactorily completed its task the Bus Depot Steering Group has now been disbanded. A proposed constitution and management arrangements for the Bus Depot will be reported in the first Policy and Resources Committee of the new Council in three months time. Once these are agreed a lease can be drawn up between the Council and the Community Co-operative. Prior to this, it would greatly assist the HPCC in promoting the Project if they could establish a temporary base in part of the Bus Depot premises. It is therefore recommended that they be granted a temporary license on part of the premises as soon as the sale of the Depot is completed, subject to satisfactory security and insurance arrangements being made."

74. So once again, Brent was anticipating being able to grant a lease to the community co-operative of the whole Site once it was properly constituted and had devised credible management arrangements for Bridge Park. Before that could happen, Brent would have to grant a temporary licence to HPCC of part of the Property (the office block) so that work could begin in establishing the project. This is inconsistent with Brent not being the sole legal and beneficial owner of the Property or with HPCC having a beneficial interest in the Property.

75. The transfer of the Property did complete on 5 May 1982. The Transfer Deed was between LTE and Brent for the agreed consideration of £1.8 million. Much reliance has been placed by Brent on clause (5)(ii) of the Transfer Deed which stated as follows:

> "(5) It is hereby agreed and declared as follows:
>
> (i) …
>
> (ii) the land hereby transferred is being acquired by [Brent] for the purpose of the provision of Community facilities being a purpose for which the Council is authorised by Section 120(1) of the Local Government Act 1972 to acquire property."

76. Brent says that it purchased the Property pursuant to the stated statutory power that enabled it to do so and that this is wholly inconsistent with any notion that it was holding the Property on any form of trust from the date of acquisition. Furthermore, it points out that the word trust does not appear anywhere in the Transfer Deed (nor in fact in any of the pre-acquisition documents). The Defendants by contrast say that the reference to s.120 in the Transfer Deed was merely needed to identify the statutory power relied upon and it is not inconsistent with the Property being subject to any of the forms of trust that they rely upon in these proceedings including a charitable trust. This is a matter that I will consider later in this judgment.

77. As stated above, grants for the acquisition were received from the GLC and the DofE. The breakdown of the funds used for the acquisition was explained in Appendix 1 of Report 57/82 of the Chief Executive dated 7 July 1982 to the PRC which showed as follows:

	£
DOE Industrial Urban Aid (the residue of Brent's original 1981/82 allocation)	36,000
DOE Industrial Urban Aid (an additional 1981/82 allocation specifically for the Bus Depot)	243,000
DOE Traditional Urban Aid Grant to [HPCC] 1982/83	75,000
GLC's Capital Programme 1982/83	700,000
London Borough of Brent Capital Programme 1981/82	746,000
	£1.8M

78. This is not properly reflective of the actual situation as the Urban Aid grants from the DofE only covered 75% of relevant eligible expenditure and the remaining 25% had to be paid by the Council. As pointed out above, there is no dispute that the actual total contribution from Brent towards the acquisition was £834,500. Mr Boulter explained this in his witness statement. He also said that Brent was responsible for interest payments in relation to the grants from central Government.

79. The application under the Inner Urban Areas Act 1978 for Urban Aid was made by Brent to the DofE on 5 February 1982. The application was stated to be for "*The Stonebridge Bus Depot Project*" which was described in the following terms:

> "This application forms part of a wider Project (see Project Report attached). The wider Project involves Brent Council with help from other agencies, buying the vacant Stonebridge Bus Depot from London Transport and leasing it to the Harlesden People's Community Co-operative as a base for local businesses and recreational, social and educational activities. This application relates to the acquisition of part of the Bus Depot for use as workshops for local businesses."

The Defendants particularly relied on the Certificate (unsigned in the copy I saw but referred to the "Chief Executive" as being the intended signatory) which was in standard form with the names of the "*firm*" and "*project*" inserted and which stated (underlining added):

> "I hereby certify that, in coming to its decision to offer financial assistance to the Harlesden People's Community Co-operative (firm) for the Stonebridge Bus Depot (project) the Council has satisfied itself, so far as is reasonable and practicable, that:
>
> 1. The firm and/or project has a reasonably assured future;

2. Without the financial assistance proposed this project would have either not been undertaken or would not have been implemented on the scale, at the time or in the location proposed in the application; and

3. The value of the project in terms of the social and economic benefits to the area as a whole is sufficient to justify the provision of financial assistance on the terms proposed in the application."

80. The Defendants say that the reference to "*financial assistance to the Harlesden People's Community Co-operative*" shows that the Urban Aid grant was intended to be paid to HPCC for the project and it should therefore constitute its contribution to the purchase price. This is the foundation for their argument on the resulting trust issue. I point out at this stage that the application form had to refer to a "*firm*" and a "*project*" but it was still an application by Brent which was said to be buying the Property. Furthermore, the "*firm*" was not HPCC but the community co-operative that was anticipated to be set up and to which a lease was to be granted.

81. In a letter dated 23 March 1982, the DofE responded to the application. In relation to the £243,000 amount, the letter explained that the DofE was able to make this additional capital allocation for financial year 1981/82 so long as both the GLC and Brent itself were committing to providing funding. It said in paragraph 2 (underlining added):

> "…we are prepared to support that part of the acquisition cost attributable to the workshop element of the scheme, up to your estimate of £243,000, under the urban programme from <u>your council's allocation</u> for industrial and commercial projects. Quite exceptionally, we find that we are able to <u>make your council an additional capital allocation</u> of this amount for the financial year 1981/82. This can, of course, only be utilised <u>if your council makes a capital payment</u> (on account, if necessary) this financial year. I must emphasise that there is no prospect of a similar exceptional resource allocation being found in 1982/83 if you are unable to use it in 1981/82."

There was no mention of HPCC or the community co-operative in the letter and it is reasonably clear that the grant was part of the allocation to Brent.

82. As to the £36,000, Mr Boulter sent a letter dated 26 March 1982 to the DofE in which he explained that Brent anticipated spending less than had been ear-marked within its Urban Aid allocation for 1981/82 on other projects and so he was requesting permission to use the unspent balance, given that the acquisition was "*now known to be £1.8M and the cost related to the Workshops is £291,600 – compared with £243,000 approved in your letter dated 31st March 1982*" (this must be a mistake for 23rd March 1982).

83. There is also a third sum of "*Traditional Urban Aid*" of £75,000. This is awarded on the basis that the project was a social need project. This was identified as the project at the Property that was then being promoted by HPCC but which would, post-acquisition, be managed by the community co-operative to be set up.

84. The £700,000 from the GLC was paid pursuant to a Deed dated 21 June 1982 between Brent and the GLC. The Deed contained a covenant that the Defendants placed much reliance on. After reciting the transfer of the Property on 5 May 1982, the Deed contained the following further recital:

> "(2) Brent proposes to carry out improvement works to the property and thereafter to use the property for the purposes described in the Schedule hereto ('the Community Project') and the GLC being of the opinion that the provision of such a Community Project is in the interests of Greater London or some part of it or all or some of its inhabitants is desirous of contributing the sum of Seven hundred thousand pounds (£700,000) to Brent towards the expenses of providing the property for the Community Project"

The Community Project was defined in the Schedule as follows:

> "A project for the provision of a Community Centre with workplaces and leisure educational cultural social and advisory facilities and office services therefor all for the use and benefit of the local community to be managed on behalf of the local community by a community co-operative with accommodation for facilities for some or all of the following and for other comparable facilities
>
> A Workshops laboratories offices studios training centres technology centres rehearsal rooms recording studios print shops and hairdressers
>
> B Leisure facilities such as badminton basketball weight-training roller skating martial arts indoor cricket football and squash
>
> C Educational facilities
>
> D Cultural facilities including provision for music and art and religious facilities for the celebration of religious festivals
>
> E Social facilities such as a discotheque licensed bar youth club canteen and coffee-bar with social areas crèche day nursery and general meeting room
>
> F Information and advice centre
>
> G Offices for the project and for the assistance of other local community projects and organisations"

85. The covenant was contained in clause 1 of the Deed and it was secured by a mortgage on the Property in the GLC's favour. Clause 1 was in the following terms (underlining added):

> "1. IN CONSIDERATION of the sum of Seven hundred thousand pounds (£700,000) now paid by the GLC to Brent pursuant to the powers contained in Sections 120(1) and 136 of the Local Government Act 1972 (the receipt whereof Brent hereby acknowledges) and pursuant to Section 16 of the Greater London Council (General Powers) Act 1974 Brent hereby covenants with the GLC that if and when
>
> (1) The property shall cease to be vested in Brent or if Brent enter into any contract whereby or whereunder any other person may be entitled to call for a conveyance or transfer of the property or any part thereof whether subject to this charge or otherwise

(2) Brent shall have granted any lease or tenancy or parted with or shared possession of the property or any part thereof otherwise than with the prior written approval of the GLC (which approval shall not be unreasonably withheld) or

(3) The property or any part thereof shall not within one year from the date hereof commence to be used for or shall thereafter cease to be used for the purposes of the Community Project

then and in any such event as aforesaid Brent shall forthwith pay to the GLC either the said sum of Seven hundred thousand pounds (£700,000) or a sum equal to seven-eighteenths of the then open market value of the property with full vacant possession whichever shall be the higher and shall pay also to the GLC interest thereon from the date of such event until payment at the rate hereinafter specified…"

86. The Defendants rely on the covenant at clause 1(3) as showing that the Property had to be used for the project promoted by HPCC and/or that Brent was committed to using the Property for charitable purposes. However, to my mind, the Deed shows first that all parties considered that Brent owned the Property and that second it was committed to pursuing the "*Community Project*" as so defined, which made no mention of HPCC or any form of trust or beneficial interest.

(d) Steering Group Company and negotiations for a lease

87. The conversion works for the Property were undertaken in two phases. Phase 1 comprised the refurbishment of the office block for occupation by a local information technology project that Mr Anderson was very involved with and also a crèche and changing rooms. Phase 1 was carried out during 1983 and was completed in December 1983 with an opening ceremony taking place on 6 December 1983. The cost of the Phase 1 works was £424,000, of which Brent contributed £118,600 and the GLC £202,400. Phase 2 was more significant and involved the conversion of the bus garage itself into a leisure complex and 32 small business units. It was only completed in 1988 and is dealt with below.

88. At the end of May 1982, Lord Bethell, the MEP for North West London led a delegation to Brussels to discuss support for the project from the EEC's Social Fund. The delegation comprised Mr Johnson and other members of HPCC, the Council's Leader and Chief Executive, and Mr Gutch. They met Sir Ivor Richards the EEC Commissioner for Employment, Social Affairs and Education and he was very impressed by Mr Johnson's presentation. Sir Ivor Richards recommended a grant from the Social Fund of £64,000 to assist with staffing and training costs.

89. Shortly after the acquisition, certain difficulties emerged as to the setting up of the community co-operative and the proposed grant of a lease to this new entity. In Report 57/82 of the Chief Executive in July 1982, these difficulties were referred to, as was the establishment of the Steering Group Company to be used as a stop-gap measure while the community co-operative concept was being worked through. The Report stated as follows:

"3.1 As indicated in Appendix 1-4.1, in the short time available it has proved extremely difficult for the HPCC to agree exactly how the Community Co-operative originally proposed might function and to carry out wider discussions with the local community of Stonebridge to determine their involvement. An important start has been made through newsletters, an Open Day etc, but more time is needed to discuss the full implications of adopting a co-operative approach to the Project. For the next 18 months the HPCC Bus Garage Steering Group therefore propose forming a limited Company that would include seven HPCC nominees, two Brent Council nominees and three Stonebridge forum nominees on its Management Committee. After 18 months the Company would be replaced by a more broadly based Community Enterprise or Community Co-operative. Full details of the constitution are given in Section 4.1 of Appendix 1. The constitution aims to satisfy the various conditions imposed by different funding bodies viz.

(1) The DoE require that Brent Council should be represented on the Management Committee (Brent Council has two places)

(2) The GLC have sought assurances that local ethnic minority community representatives will be enabled to remain in control of the development and management of the Project. (The HPCC nominees form a majority on the Management Committee and the Management Committee itself controls the membership of the Company).

(3) Brent Council and other agencies have always been anxious that all sections of the local community should be involved in the Project (the Stonebridge Forum can nominate three places on the Management Committee and requirements regarding consultation with local community are written into the Company's Articles of Association. A requirement to provide for user group representation in the longer term is also written into the constitution)."

90. Report 57/82 went on to make recommendations in relation to the interim leasing arrangements pending the establishment of the community co-operative. It stated:

"Leasing Arrangements

4.1 Once [the Steering Group Company] is constituted and registered and its professional advisers have been appointed it is suggested that Brent Council leases the whole Bus Depot site to the Company for 18 months at a peppercorn rental and grants the Company 100% discretionary rate relief. After 18 months Brent Council will review the position in the light of

(1) the extent to which the Company has complied with its own constitution

(2) progress made in constituting and registering a community enterprise or community co-operative

(3) the financial circumstances of the Company

> Provided it is satisfied with progress Brent Council will draw up a new lease with the newly established community enterprise or community co-operative. The level of rental and the position on rate relief can be reviewed at the time in the light of the Community enterprise/co-operative's finances. In order to build these safeguards into the leasing arrangements, the Council and the Company will have to make a joint application to the County Court to be excluded from the provisions of the Landlord and Tenants Act 1954 for 18 months and thus prevent the company from having security of tenure beyond this time.
>
> …
>
> 4.3 If Committee agree to these arrangements it is unlikely that the proposed Company will be registered and the term of the lease agreed before October 1982. The present Steering Group's licence permits them to occupy three rooms at the Bus Depot as an office base rent and rate free. Brent Council is therefore currently the rated occupier. No rates are payable for the first three months after completion, but as from 5th August 1982 the Council will be liable for rates currently charged at £53,000 p.a. Since it is hoped that some conversion work will commence on the Bus Depot before October 1982, it is suggested that as soon as possible a new license [sic] be drawn up with the present Steering Group permitting them to occupy the whole premises and making them liable for rates. Concurrently it is suggested that the Steering Group be granted 100% discretionary rate relief…"

91. By December 1982, the Steering Group Company had still not been formed. In the Chief Executive's Progress Report of the Stonebridge Bus Garage Project of December 1982, the difficulties of establishing the proposed community co-operative were again referred to and it suggested that the Steering Group Company, when incorporated, would "*use its best endeavours to promote the formation of the community enterprise or community co-operative within eighteen months of the formation of the company*." The Report also stated that:

> "3.6 The Director of Law and Administration is currently preparing a two year lease on the Bus Garage for the Company. The lease will operate from January 1983 until January 1985 on the understanding that a larger term lease will be agreed after this date, when the final form of the Company is known."

The reference to the "*final form of the Company*" can only sensibly be to the proposed community co-operative as it was not contemplated that the Steering Group Company would evolve into something else. In accordance with the earlier Reports, including the December 1981 Report, the intention was that a long lease would eventually be granted to the community co-operative. I point out that there is no mention of either an option to purchase the freehold or of an obligation on the part of Brent to grant the long lease. They were merely considering the best way forward for all concerned.

92. The Steering Group Company was incorporated on 21 January 1983. The members and directors of the Steering Group Company mirrored that of the Steering Group and comprised: seven from HPCC; three from other community organisations; and two from Brent.

93. However, the 18 month or 2 year lease that had been contemplated in previous reports was never granted to the Steering Group Company. In Report 14/84 of the Chief Executive presented to the PRC on 25 January 1984, the decision to grant a licence rather than a lease is explained (underlining added):

> "6. Licence and Lease Arrangements
>
> 6.1 The licence and lease arrangements for the Project have already been referred to in this report. The current position is that at their meeting on 8th December 1982, the [PRC] agreed to lease the Stonebridge Bus Garage to the HPCC Bus Garage Steering Group at a peppercorn rental for an initial period of two years commencing January 1983. During this period it was envisaged that the Steering Group would decide whether they wished to form themselves into a Community Co-operative or to amend their current constitution in any way. It was also envisaged that discussions would take place about the level of rent that the Steering Group might pay in the longer term. The rent level was to reflect the following factors:-
>
> 1. The Steering Group's ability to pay.
>
> 2. The original rental value of the Bus Garage prior to conversion (estimated at £50,000 p.a. in 1982).
>
> 3. The debt charges incurred by Brent Council in acquiring and converting the Bus Garage. These are estimated £111,000 p.a. for acquisition and £100,000 p.a. for conversion on completion of the project on the assumptions set down in 2.5.
>
> At the end of the two years the Council would then enter into a long term lease with the Steering Group either in its present form or in some reconstituted form. The lease would include terms for rental payments.
>
> 6.2 In the event, it has taken longer than anticipated for the two parties to agree terms. After extensive discussion it was considered more appropriate to draw up a licence rather than a lease, since a lease could commit either party to terms which they are not yet in a position to assess fully. The terms of a licence are, therefore, about to be agreed. It is recommended that this licence should last until March 1987 and that a peppercorn rental only should be paid during this period. After March 1987 the licence should be replaced by a long-term lease which would incorporate some provision for rental payments based on (1)-(3) above. By this time it should be possible to assess the validity of the income projections set down in Section 3 of this report and to assess the income potential of Stages B and C. This would mean that the Steering Group would have had a five year rent free period which is in line with what was originally suggested to [PRC] in February 1982 in the first Committee report on the Project. However, it is now clear from the income projections above that the Steering Group would be unlikely to afford to pay rental payments that would cover the debt charges incurred by the Council which in total could be at least £211,000 p.a.

> 6.3 One further aspect of the licence that requires decision is the position regarding sub-letting. The terms of the licence require the Steering Group to obtain approval from the Council for all sub-licences. The Council's policy to date has been to allow the Steering Group to retain all rental from commercial lettings (e.g. for advertising hoardings) provided the Steering Group can show that this income is necessary for the development of the Project. Members are asked to decide whether they wish to continue with this policy."

The Report therefore recommended that PRC:

> "10. Note that the terms of a licence between the Council and the HPCC Bus Garage Steering Group are about to be finalised (…) and agree that:-
>
> (a) the licence should terminate once the terms of a longer-term lease have been agreed and, in any event, not later than March 1987;
>
> (b) a peppercorn rental only should be payable until March 1987, thereafter rent to be paid in accordance with the terms of the longer term lease (terms yet to be agreed));
>
> (c) all sub-licences to be approved by the Council."

94. The decision to grant a licence rather than a lease appears to have been taken after discussions between the parties and for the benefit of both parties. It was to enable there to be a further assessment of the financial viability of the project without the parties being overcommitted to each other. The assumptions behind these discussions were that the Steering Group Company would receive all of the income deriving from Bridge Park including from commercial sub-licences but would not have to pay any rental or licence fees until at least March 1987 when the position would be reassessed. The Council was essentially giving up its entitlement to rental income from the Property to allow the Steering Group Company to establish and manage the project until it got to a sustainable level when it could start paying rent to Brent. Both parties seemed to be determined to do everything possible to make the project succeed but were also realistically looking at what they would do if it did not succeed. There was no mention of an option or that the Steering Group Company or HPCC being entitled to buy back the freehold.

95. I have not seen the actual licence agreement entered into at that time (if there was one) but a licence was formally granted in a Development Agreement dated 25 June 1986 between the Steering Group Company, called the "*Developers*", and Brent. Mr Johnson signed this Agreement as a director of the Steering Group Company. This Development Agreement was in relation to Phase 2 of the works required to convert the Bus Garage and was to facilitate the building contract entered into at the same time between the Steering Group Company and Trollope and Colls Management Limited. The Development Agreement relevantly provided as follows:

> (i) In the first recital: "*The Council owns all that plot of land*" which was the Property;
>
> (ii) At clause 1:

> "Without prejudice to the Developers [sic] existing permission to use the site and for the purpose of enabling the Developers to erect and execute the new premises buildings and works herein described…and in accordance with an agreement of even date … and made between the Developers (1) and Trollope and Colls Management Limited (2) (hereinafter called "the Management Contractor") the Developers shall have licence and authority to enter the site and to permit the Management Contractor and any successors in title independent contractors professional advisers and all other persons authorised by the Developers…"

(iii) At clause 3(vi) that:

> "without prejudice to the terms hereof the Council will continue negotiations with the Developer subject to contract upon the terms for a Lease of the site provided that this Agreement shall not have been otherwise determined."

96. In accordance with clause 3(vi) of the Development Agreement, discussions did continue regarding a lease of the Property. On 26 November 1986, Brent's Director of Law and Administration at the time, Mr Stephen Forster, wrote to a Mr Samuel Maselino described as the Legal Adviser to the Steering Group Company. Mr Johnson said in his evidence that Mr Maselino was not a property lawyer and was principally engaged to deal with staff contracts and the like. Be that as it may, I assume that Mr Maselino well understood what was written in this letter. The letter was headed: "*Subject to Lease*" and it was clearly a response to a letter of Mr Maselino's (which we do not have) as it states:

> "I refer to your letter of 20th August. I would comment on the points you make as follows, please note that my letter is on the basis that my instructions are subject to contract and subject to the appropriate Committee approval."

It then continues under various headings, relevantly as follows:

> "Parties
>
> I am instructed that discussions are taking place between your clients and my Council as to the structure of the new organisation which is to succeed the present [Steering Group Company] as the manager of the project. I am also instructed that the Lease will probably be granted to the organisation, when its structure has been agreed.
>
> Term
>
> I am instructed that a term of 99 years is acceptable to my Council.
>
> Rent
>
> I am instructed that your proposal that the tenants [sic] audited accounts and auditor's certificate should form the basis upon which any surplus is determined and if so how much rent is to be paid, is acceptable to my Council.

> I am instructed that my Council will require the payment of a rental calculated on the following basis.
>
> (a) peppercorn rent for 5 years;
>
> (b) thereafter a rent review will take place and the tenants will be required to pay either the market rental or 5% of the surplus whichever is the smaller. For the remainder of the term the rent will be received on this basis in every fifth year.
>
> As to method of payment I suggest quarterly in advance."

There were then some detailed points made on the drafting of specific clauses, responding to some suggested drafting put forward by Mr Maselino (which rather undermines Mr Johnson's evidence as to his ability to deal with property matters).

97. The crucial last paragraph of the letter must have been a response to Mr Maselino asking that the lease include an option for the tenant to purchase the freehold. It said:

> "Tenants [sic] Option to Purchase Reversion
>
> I am instructed by the Office of the Chief Executive that officers have no objection in principle to your cleints [sic] acquiring the freehold of the property."

98. Mr Maselino responded by letter dated 26 January 1987. His letter was also headed "SUBJECT TO LEASE" and he said:

> "My directors find the comments therein, generally satisfactory and look forward to receiving your final draft when you do take instructions on the outstanding points."

99. It was still therefore at this stage contemplated that the lease would not be to the Steering Group Company but to the proposed community co-operative. And it would be that entity that might be granted the option to purchase the freehold. However, by 1988, the community co-operative had still not been set up, no lease had been granted to any entity and it appears that HPCC had dropped its request for an option to purchase the freehold. In Report 24/88 of the Chief Executive, the Director of Finance and Director of Development, the PRC was asked to approve the following recommendations:

> "2.2 Agree the proposals for the establishment of the new community organisation and its relationship with the complex with the addition that two Brent Councillors serve on the Management and Executive Committees with voting rights and that there be no worker directors.
>
> 2.3 Agree the proposed lease arrangements subject to the agreement of the LRB and the agreement of the Director of Law and Administration that the community organisation proposals are incorporated into the constitution of the organisation which signs the lease."

The section of the Report dealing with the Lease said as follows:

> "9.5 LEASE
>
> 9.5.1 That subject to the incorporation of the new Community Organisation as a Company whose memorandum and articles of association shall comply with the Council's requirements as stated in this report, the Council shall grant a Lease to the new Community Organisation on the following terms:-
>
> Term:- Ninety nine years (99 yrs.)
>
> Rent:-
>
> (a) For the first five years a peppercorn.
>
> (b) Thereafter to pay a market rental on a basis to be negotiated with group.
>
> The Project have dropped their request to purchase the freehold for the time being."

100. Mr Johnson's evidence was that he ultimately refused to sign the draft lease, I assume on behalf of the Steering Group Company, because the final draft had not included the option to purchase the freehold "*by giving Brent back the contribution they made towards the purchase*". He explained in cross-examination that the reference to dropping their request to purchase the freehold in Report 24/88 was only "*for the time being*" and that they continued to want to purchase the freehold. While they may have continued with that general aspiration, there is nothing in the documents before the court that indicates that this was pursued by Mr Johnson and HPCC from the time the request was dropped in 1988. It was not raised in the possession proceedings by the Steering Group Company (Ms Thompson referred to this in her affidavit at the time – see para [28] above). It is difficult to reconcile Mr Johnson's evidence as to the reason why the lease was not signed with the contemporaneous documentation. The question of the lease and its terms does not thereafter seem to have been raised, according to the available documentation.

101. Mr Wood's evidence was that, while he was Chief Executive between 1986 and 1995, he did not remember there being any discussion about the purchase of the freehold and that he was surprised that the Steering Group Company had not sought to finalise the lease that was being negotiated by Mr Maselino. He accepted that there appeared to be references to Brent being amenable to there being an option included in the long lease but he could not recall any discussions about the terms of such an option and what would be payable by way of consideration for such an option and/or in exercise of the option. He said that he would have remembered any such discussions if they had occurred as he remembers discussions about other sales by Brent of land it owned and that the sale of Council assets like this would have had to have been at market value.

102. As stated above the Phase 2 works were to convert the Bus Garage into 32 business units, conference and seminar rooms, a sports hall, a music-recording studio, squash courts, a disco hall, a restaurant and bar. The original plans for Phase 2 proved to be more costly than had first been anticipated and came under careful scrutiny from those who were funding it, in particular the DofE. The overall funding was some £3.7 million and this was achieved. The official opening of Phase 2 of the Bridge Park project took place in December 1988 and it was conducted by HRH the Prince of Wales, who had

taken a keen interest in the project following several conversations that he had with Mr Johnson.

103. The funding for Phase 2 came from the following sources:

DofE (Urban Aid Programme)	£1,550,000
Brent Council	£1,500,000
Midland Bank Loan (guaranteed by Brent)	£350,000
Tudor Trust	£150,000
London Marathon Trust	£54,000
Sports Council	£50,000
National Westminster Bank	£25,000
British Petroleum	£15,000
City Parochial Trust	£10,000
National Council of Voluntary Organisations	£10,000
	£3,714,000

104. The Urban Aid grant from the DofE was, as before, funded as to 25% by Brent. That meant that Brent paid £387,500 on top of its own contribution of £1.5 million. Brent also guaranteed the Midland Bank loan of £350,000. According to Mr Wood, the DofE remained concerned about releasing sums to the Steering Group Company or HPCC as they had no experience of handling such amounts or managing such a project. The DofE wanted Brent to supervise the works and Brent's Assistant Director of Development was appointed as the nominated Architect in the building contract for the Phase 2 works. It appears that the DofE felt more secure in the knowledge that Brent ultimately owned the Site. In an internal DofE note dated 4 August 1983 to the Minister, Sir George Young, the following was said:

> "The major safeguard for public funds invested in the project is that the ownership of the property, which would represent a substantial capital asset, rests with Brent."

105. The Midland Bank loan of £350,000 was eventually entered into on 3 June 1987 by the Steering Group Company, guaranteed by Brent. On the same day Brent entered into an agreement with the Steering Group Company governing the ongoing arrangements at the Property and giving the Steering Group Company the right to manage and collect the rents from the business units but that it would be responsible for making all repayments of the loan.

106. Mr Johnson said in his evidence that he was not happy with being forced to take out the loan from Midland Bank as he thought it might be a hindrance to the aim of gaining

financial independence especially as the interest rates were so high. However, Mr Johnson also considered that the fact that Brent had encouraged them to take out the loan indicated that Brent understood that it did not wholly own the project and that HPCC and the Steering Group Company had substantial interests in the project and the Site. Mr Johnson also relied on the fact that funding had come from various different sources such as the Sports Council and the London Marathon Trust which was only achieved because of his and HPCC's efforts and would only have been paid because of their involvement.

107. In my view, it is reasonably clear that Brent was indeed very supportive of the project and wanted HPCC and the Steering Group Company to succeed in their ambitions for the Site. It put large amounts of money into the project. Brent was also willing to grant a lease to the community co-operative that HPCC intended to set up, possibly also with an option to purchase the freehold on terms. But wanting the project to succeed is very different from giving up ownership of a valuable capital asset and there is no evidence before me that Brent ever agreed to give up any interest in the Site. As the note above says, ownership of the Site was Brent's security in the case of a failure of the project.

(e) <u>The 1990s and demise of the project</u>

108. While Bridge Park was operated successfully in the late 1980s by the Steering Group Company, things took a turn for the worse in the early 1990s. There is a sharp divergence on the evidence between in the main Mr Johnson and Mr Wood as to the reasons for this. Mr Johnson blames Brent for losing interest in Bridge Park and withdrawing grant funding so as to effectively force the Steering Group Company into liquidation and to drive out HPCC. He said that Brent had made unfounded allegations of financial impropriety which it had used to take Bridge Park away from the community. Mr Johnson said that he resigned as Chairman of HPCC at this time because of the damage and humiliation that Brent had inflicted on him personally and the obstacles that Brent had put in the way of their progressing the project.

109. Mr Wood denies that Brent deliberately sought to withdraw from the project or that it had made unfounded allegations of impropriety. He said that the findings of an internal audit report forced Brent not to plough further public money into the project and it was clear that a wholly new management was required. By 1992, the Steering Group Company had racked up debts of some £828,000 and the project had experienced repeated financial crises.

110. I cannot decide the actual reasons for the failure of the Steering Group Company and why Brent felt it had to gain control of Bridge Park. Both parties agreed that it was unnecessary for me to do so. What is apparent is that in July 1989, Brent, HPCC and the Steering Group Company jointly commissioned a Report from Deloitte Haskins & Sells into a business strategy for Bridge Park (the **Deloitte Report**). One of the terms of reference for the Deloitte Report was: "*to review the granting of a long term lease and freehold to the project and the role this could play in the financing and development of the project.*" In relation to ownership of the Property, the Deloitte Report went on to state in the Executive Summary:

> "<u>Property Issues</u>

32. It is important that the project gains greater security regarding use of the property. There are two alternative options which will achieve this:-

    (a) long lease from [Brent]; or

    (b) sale of freehold to Bridge Park.

33. However even assuming sale at the original purchase price of the land (£1,8 million) the project cannot adequately cover the loan repayments with the latter option. Unless funds can be raised from charitable donations or [Brent] is prepared to allow repayment over say 20 years at preferential interest rates, we do not believe that a sale is feasible. We therefore recommend the long lease option including provision for a peppercorn rent."

111. Mr Johnson said in his evidence that the Deloitte Report fundamentally misunderstood the nature of the project and the manner in which the original purchase money had been obtained, that is through the efforts and involvement of HPCC. However, as the Deloitte Report itself makes clear, I consider that it fully understood how Bridge Park was purchased and the importance of HPCC's past and future involvement in the project. For example, the background to the project was explained in the Deloitte Report in the following way (underlining added):

"Importance

11. This is an important project, not only in the local area, but also in acting as a flagship for black community enterprise across the UK.

12. Following riots in many inner city areas during the early 1980s, the [HPCC] was formed to prevent a similar situation arising on the Stonebridge Estate and neighbouring areas. The aim was to create a focal point for developing community based projects to improve the social and economic position of people living in the area.

13. When the Stonebridge Bus Garage became vacant and was offered for sale by London Transport, HPCC persuaded the DOE, GLC and London Borough of Brent to purchase this site on their behalf and to allow them to develop it for the benefit of the Community. The project has become a model for other similar community projects in the UK and internationally. Failure of this project at this stage would not only be disastrous for the self-esteem of the local community, but also in terms of generating essential support for all other similar projects now underway.

14. For the project to have developed to the current stage a high level of commitment has been necessary from the community, the local authority, central government and business leaders. It is critical to the future success of Bridge Park and other projects that this level of commitment is maintained and strengthened."

The Deloitte Report concluded as follows:

"CONCLUSION

> 44. Bridge Park is at a critical stage in its development. The initial dream has only partially been fulfilled. The inspiration that created this project now needs a different level of assistance as the project matures. Further investment in facilities, management and staffing is necessary to ensure future success. Our forecasts have illustrated that the project can achieve a position close to self-sufficiency but, to do so, it will need continued grant support for the foreseeable future.
>
> 45. Achievement of self-sufficiency will also require continued management energy and effort, together with stronger financial disciplines and controls. Furthermore, continued commitment from the private sector will be critical to putting the plans into operation and efforts must be made to ensure this is obtained.
>
> 46. In seeking yet more support for this project, particularly in terms of commercial acumen and management skills, Bridge Park should not be seen as having failed. On the contrary, the existence of these needs is a reflection of the project's success. The members of HPCC and the existing management of Bridge Park, none of whom had any previous business experience of this kind, had a vision which they have turned into reality – they have succeeded where most others might have failed.
>
> 47. They have learnt a lot and other communities are now benefitting from that experience. They now need new skills and additional expertise to develop further. This provides a lesson for all community projects of this kind; they cannot happen in isolation. They require support from both the public and private sector in addition to the commitment of the community. Support, however, is not just a short term "pump priming" exercise – it is a long term commitment which evolves until all the goals have been achieved."

112. In my view the Deloitte Report provided an optimistic, as well as an honest and realistic, assessment as to what had been achieved at Bridge Park, principally by HPCC and the Steering Group Company, and as to what needed to be done to build on that success. It recommended that "*the current level of grant be maintained [by Brent] until March 1993 whereupon a review should be made with a view to reducing the grant support*". While it was clear that the project had to remain in the hands of the community, both financial and managerial support from outside was needed. In the way it dealt with the ownership of the Property and the grant of a lease, the Deloitte Report assumes that Brent owned the freehold absolutely and there is no mention of an option for the community to buy it back let alone any obligation on Brent to grant such an option or even a lease. It does not appear that Mr Johnson or HPCC sought to correct that assumption.

113. Brent continued to provide a revenue grant of in the region of £360,000 pa until 1992, which was quite a strain on its already tightened resources. In August 1991, the Steering Group Company entered into an overdraft agreement with the Co-operative Bank PLC (the **Co-op Bank**) which was required in order to enable it to continue trading. Brent guaranteed the overdraft up to a maximum of £150,000 and it did so in return for a commitment by the Steering Group Company to reducing its expenditure by £270,000 pa.

114. However, by April 1992, Mr Wood had concluded that Brent should cease to pay the grant to the Steering Group Company and should look to alternative management structures for Bridge Park. This was contrary to the advice of the Deloitte Report which recommended continuing the grant until at least March 1993 but Mr Wood felt strongly that Brent should not fund the current management of Bridge Park. In his Report 50/92 to the PRC dated 14 April 1992 he noted that the Steering Group Company had debts of £828,000, including the Midland Bank loan and the Co-op Bank overdraft, both of which were guaranteed by Brent. The Report said that discontinuing the grant would probably lead to the winding up of the Steering Group Company and Brent being called on to honour its guarantees. Mr Cottle cross-examined Mr Wood on why he did not also take into account a potential liability for breach of the covenant in the GLC Deed to use the Property only for the "*Community Project*" as so defined. While Mr Wood could not remember why that was not referred to, save for speculating that he must have had advice that that was not an issue, it seems to me that there was still an intention to operate Bridge Park for the benefit of the community but without the Steering Group Company being in charge.

115. By mid-1992, the Steering Group Company was in default of its repayments on the Co-op Bank overdraft and the Midland Bank loan. Midland Bank called on Brent's guarantee and on 8 March 1993, Brent repaid the outstanding amount of £345,738.97.

116. On 17 August 1992, Brent gave notice to terminate the Steering Group Company's licence to occupy the Property on 14 September 1992, then extended to 14 November 1992. Possession proceedings then ensued and they took a protracted course. The Steering Group Company put in a Defence and Counterclaim dated 16 December 1992. It was claiming that it had an "*equitable interest in the [Property], namely a 99 year leasehold interest*" and this was based on the letter of 26 November 1986 from Brent to Mr Maselino (referred to in para [96] above) even though that was expressly stated to be "*Subject to Lease*".

117. Brent also issued a claim against the Steering Group Company to recover the sums that it had paid Midland Bank. Brent secured a money judgment against the Steering Group Company and this led to a winding up petition which resulted in a compulsory winding up order made on 28 October 1994. It appears that, as part of its defence to the Midland Bank proceedings, the Steering Group Company was running the same argument as to an equitable interest based on the alleged agreement to grant a 99 year lease contained in the 26 November 1986 letter. Alternatively, reliance was placed on an alleged estoppel argument.

118. There was a hearing on 13 June 1994 before Machin J on Brent's appeal from an order of Master Eyre setting aside the default judgment that Brent had entered. Remarkably, Brent's Counsel at the time made handwritten notes of Machin J's judgment and these have been transcribed. Machin J allowed the appeal which meant that Brent's judgment in default was restored. In the course of his judgment, Machin J considered the various arguments that the Steering Group Company had raised as to an equitable interest in the Property. It appeared that Mr Johnson must have provided an affidavit for such purpose although he did not remember doing so and thought that he had not been involved at all with the possession proceedings. Machin J dismissed all of the arguments saying: "*The Defendant could not have …believed that it would obtain a lease. If it did so believe, that was unreasonable*." There does not seem to have been

any argument that the Steering Group Company was entitled to the freehold or an option to acquire the freehold of the Property.

119. While Ms Holland QC accepted that the judgment does not amount to any sort of *res judicata* or issue estoppel against the Defendants, it is significant in my view that, even though it was the Steering Group Company that was fighting to stay in possession of the Property, no arguments of the sort that are now being relied upon by the Defendants were raised at the time, particularly as that was so much closer to the material time and when the witnesses could be expected to have a clearer recollection of what may have been represented to them by Brent.

120. After the Steering Group Company went into liquidation, its liquidator, Mr Roger Cork, by letter dated 11 April 1995, consented to an order surrendering possession of the Property to Brent. Brent's attempts to recover possession were further frustrated by an argument that the Steering Group Company had allegedly passed a resolution on 11 March 1994 transferring its assets to the "*Bridge Park Charitable Trust*". It is unclear whether such an entity actually existed and, when this was put to the liquidator, he responded by letter dated 14 June 1995 saying that he had found no evidence of such a transfer taking place and further:

> "If I had been shown such a resolution, I would have considered it to be invalid because of the lack of consideration, and because it was passed at a time when the company was unable to satisfy a statutory demand from Brent Council for £345,738.97. I would therefore have regarded it as an obvious attempt to put the company's assets out of the reach of creditors."

121. There were further difficulties in obtaining possession of the Property described more fully in Mr Benham's witness statement, he having become Chief Executive of Brent in 1995. What happened then and thereafter is not relevant to the issues that I need to decide and it may well be disputed. Suffice it to say, that since the mid-1990s, Bridge Park has been managed directly by Brent and Mr Johnson and HPCC have had no involvement whatsoever.

(f) <u>The Current Proposal for the Property</u>

122. Bridge Park is currently home to Bridge Park Community Leisure Centre which comprises a sports hall and associated health and fitness facilities, a large community hall with catering and conference rooms and a number of business units. It also contains Technology House which is a separate office block that is used as a children's nursery and the base for a church group. It is however in significant disrepair and is proving to be inefficient and expensive to operate in terms of energy consumption and layout. In a Report dated 17 February 2014 entitled "*Proposed Redevelopment of Bridge Park Community Leisure Centre*" prepared by Brent's Strategic Directors of Regeneration and Growth and Environment and Neighbourhoods (**2014 Report**), they estimated that continuing to run Bridge Park as it is, without any substantial redevelopment but requiring major structural repairs, would cost Brent over £4 million over the next 10 years.

123. Brent therefore undertook a community-wide consultation programme between August and September 2013 (**2013 Consultation**) so as to canvass views as to various proposals it had formulated for Bridge Park. Brent asked local residents to express their preference as between leaving Bridge Park as it is and four design options that had been developed by a firm of architects, as follows:

(a) Option 1: A sports centre with gym and ancillary sports halls and treatment rooms with a function hall;

(b) Option 2: Option 1 plus a 4 lane 25m swimming pool;

(c) Option 3: Option 2 but without a function hall;

(d) Option 4: Option 1 plus a 5-a-side football pitch under dome.

124. There was a relatively small response to the consultation from the local population. There were 177 responses and of these there were approx. 95% in favour of replacing the existing facility with one of the Options above. The most popular was Option 2 with the swimming pool; the other Options each received a similar amount of support. The 2014 Report contained a full analysis of these results and examined the strategic need for the proposed facilities to be provided and in particular carried out an equality impact analysis to assess whether the proposals would eliminate discrimination, advance equality of opportunity and foster good relations within the local community. While the Defendants were highly critical of the consultation, claiming that there were too few responses for it be meaningful, Brent clearly attempted to engage with the local community and conducted a thorough analysis of the responses and of the impact of the various proposals and I consider it was reasonable of Ms Downs to say that the consultation showed "*significant and overwhelming support*" for replacing the existing facility at Bridge Park.

125. However, the only way in which Brent says that it could fund the design and construction of a new leisure and community facility was by the sale of the majority part of the Site to an adjoining landowner, GMH. This is particularly the case, as Ms Downs explained, after the significant reductions in Government funding for local authorities in 2011 and the substantial extra strain on resources through the increases in responsibilities for local authorities. After negotiating with GMH, on 14 June 2017, Brent entered into the CLSA. Under the CLSA Brent will retain ownership of the land upon which the new leisure and community facility would be built. There is also a further advantage that adjoining land called the Unisys Site which is derelict would also be redeveloped.

126. Ms Downs' evidence in relation to the proceeds of sale from the CLSA is that it will all be required for the development and construction of the new leisure and community facility. Indeed she says that Brent will have to contribute some of its own funding in addition to the proceeds of sale. While Mr Cottle sought to challenge this evidence in cross-examination by reference to some figures in a 2013 Report, I have no reason to doubt Ms Downs' evidence and that it is Brent's genuinely held view that, in order to provide the new enhanced facility at the Site, it is necessary to sell off the majority of the land at the Site. The suggestion that Brent are "*profiting*" from the sale is unfounded and, in any event, Brent cannot sensibly "*profit*" from a sale of its assets as it is statutorily required to reinvest proceeds of sale for the benefit of the local community.

Nevertheless, I understand the Defendants' dismay at seeing a large part of their creation sold off for private development, even if this is necessary in order to gain an enhanced facility for the community.

127. Brent carried out a further consultation in 2017 in order to update the local community on the progress of the redevelopment proposals and to seek input on the design of the new leisure centre. Some 750 responses were received this time and these showed strong support for the proposals and also identified further community facilities that the local community would be interested in seeing in the local area. Brent commenced further negotiations with GMH in the light of the 2017 Consultation responses so as to see if the CLSA could be amended to take into account the extra community needs expressed in the responses.

128. Possibly in response to the Defendants' application for restrictions to be registered against Brent's title (see section below) and the anger and protests from Mr Johnson and the HPCC to the proposals, Brent resolved to set up in 2019 a resident advisory group in relation to the new development at Bridge Park to provide a forum for community input into the future specification and use of the new leisure centre and associated facilities. As Ms Downs was keen to emphasise in her evidence, Brent must, while recognising the past, serve the needs of the present and future local community whose needs and demographic has changed since the 1980s. As she said in her witness statement:

> "42. I realise that many people nonetheless have an emotional attachment to [Bridge Park], given its extraordinary history. That said, Brent must operate in the present and with a view to the needs of the local community as it currently stands…"

(g) <u>The Defendants' objections to the CLSA</u>

129. It remains unclear to me exactly what the Defendants wish Brent to do with the Property in the current circumstances. They are unhappy with the fact that Brent wishes to sell off some of the Property to GMH and that Brent might thereby "*profit*" from the acquisition that would not have taken place without HPCC's campaign and involvement at the time. So they claim that they have an equitable interest in the Property, or that it is held on charitable trusts, in order to disrupt the sale to GMH, even though I am unaware of what they actually want Brent to do with Bridge Park. I was told by Mr Johnson that what he wanted to achieve was a form of partnership between HPCC and Brent in which they could work together with the developers to create something special for the local community and respecting the critical role played by HPCC in the history of Bridge Park.

130. In order to prevent the CLSA taking effect, Mr Johnson, "*as a trustee of the* [HPCC]" applied for the entry of a restriction on the Land Register against the title of the Property. The wording of the restriction applied for was the following:

> "No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court."

In a letter from Mr Johnson's then solicitors, DWFM Beckman, that accompanied the application for the restriction, they explained:

> "It is now understood that the London Borough of Brent intend to sell the land and property to a neighbouring developer who will demolish the existing buildings to the disadvantage of the trustee of the HPCC and the local community.
>
> The application for a restriction seeks to protect the interest of the trustee of the HPCC and the local community and to obviate the endeavour to sell for a substantial sum the land which the London Borough of Brent hold in trust for trustees of HPCC."

131. By letter dated 16 October 2017, Brent's solicitors, Bevan Brittan LLP, objected to the entry of the restriction on the basis that Mr Johnson did not have standing to make the application, did not satisfy the requirements of the Land Registration Act 2002 and did not have any form of interest in the Property.

132. On 16 March 2018, SCT was incorporated as a company limited by guarantee and for charitable purposes. Its stated objects are "*Community Regeneration and Consultancy*". The members and directors of SCT are Mr Johnson, Mr Roy Forbes Allen and Mr Jay Mastin. On the same day as SCT's incorporation, DWFM Beckman wrote to the Land Registry saying:

> "We must advise you that our client, Mr Leonard Johnson (as Trustee of [HPCC]) has now formed a company, [SCT], which has taken the place of the HPCC and is now representing Mr Johnson and the local community.
>
> Our clients therefore request that the application for a restriction on the above title should be transferred into the name of that company and perhaps you will be kind enough to amend the application accordingly."

On 23 March 2018, DWFM Beckman wrote again to the Land Registry saying that: "*it is crucial for our clients that you register the company [SCT] as making the application for a restriction on the Register*".

133. As the Land Registry had referred the matter to the First Tier Tribunal, Property Chamber, they wrote to the parties on 23 March 2018 to inform them that the Judge had directed Mr Johnson on behalf of HPCC to lodge with the Tribunal by 6 April 2018 "*the full description of the legal status of the Harlesden People's Council [sic] (supported by documentation if appropriate) and evidence of the appointment of [Mr Johnson] as trustee of the Council with authority to represent the Council in this matter*." In response on 26 March 2018, DWFM Beckman wrote to the Tribunal saying:

> "…our clients are now [SCT] which has taken over the rights and responsibilities of HPCC.
>
> …we would add that Mr Leonard Johnson who made the application for a restriction on the register is a director of the company and has been involved with HPCC throughout.

> The interest of Mr Leonard Johnson who is a Director of the company is that he was involved with negotiating the purchase price at a significant discount from London Transport (as it then was) and the raising of funds necessary to complete the purchase with all the attendant costs of purchase and all funds necessary for the development of the land."

134. Following notification to the Tribunal of Brent's intention to commence High Court proceedings to determine the dispute and the subsequent commencement of these proceedings on 6 June 2018, the Tribunal ordered (by Order dated 28 June 2018) that the proceedings before it be stayed pending the outcome of these proceedings.

(h) The course of these proceedings

135. Following the service of an Amended Defence on 7 November 2018 (I believe this was drafted at a time when the Defendants did not have legal representation), Brent issued an application on 13 December 2018 to strike out the Amended Defence or, in the alternative, for summary judgment. This application was heard by Deputy Master Rhys on 27 February 2019 and he delivered his written judgment on 21 March 2019 ([2019] EWHC 681 (Ch)). Deputy Master Rhys decided as follows:

(1) The Defendants' public law arguments should all be struck out as an abuse of process;

(2) The Defendants' private trust arguments would need to go to trial as they could not be resolved without full disclosure and the hearing of evidence;

(3) In relation to the charitable trust arguments, the Defendants did not have standing themselves to run those arguments and notice should be served on the Attorney General to see if he/she wished to "*take up the cudgels on behalf of the local charity*".

(4) The Defendants should have their costs in the case.

Following the directed notice being served on the Attorney General, on 17 July 2019, he informed the parties' legal advisors that he would not be applying to join the proceedings.

136. Because of the Attorney General's response, Brent applied to strike out the charitable trust arguments of the Amended Defence on the basis that this was the logical consequence of Deputy Master Rhys' order. This application was heard by Master Clark who, in her handed down judgment on 20 August 2019 ([2019] EWHC 2217 (Ch)), granted the application and struck out the charitable trust arguments in the Amended Defence. Directions for trial were made at the same time.

137. On 6 November 2019, Birss J gave the Defendants permission to appeal the Order of Master Clark and, so as to avoid any difficulties in relation to standing arguments, Birss J also gave permission to appeal the Order of Deputy Master Rhys in relation to the charitable trust arguments. The substantive appeal hearing came on before Birss J on 24 March 2020. By a judgment handed down on 29 April 2020 (reported at [2020]

EWHC 933 (Ch)), Birss J allowed the Defendants' appeal, largely on the basis that it was unclear from the Attorney General's response whether he intended to remain neutral on the question of the existence of a charitable trust or whether he was against the existence of such a trust. The Order that was made by Birss J on 1 May 2020, was that the Attorney General should be joined to the proceedings and that she should indicate by 1 June 2020 whether she was neutral or against the existence of a charitable trust. It is clear from para. [44] of Birss J's judgment that, if the Attorney General had been against the existence of a charitable trust, the Defendants would not have been able to run the argument and it would have been struck out. However, if she remained neutral, then they would be able to argue for its existence.

138. By a letter dated 21 May 2020 and an email of 16 June 2020, the Attorney General indicated that she would take a neutral position in these proceedings. Accordingly, the Defendants are able to argue for the existence of a charitable trust.

139. Even though the time was tight, the parties managed to serve their witness statements on 10 June 2020, and after the refusal by Mann J of an order for expedited listing of an adjourned trial date from 1 October 2020, an application by Brent, supported by the Defendants, for an adjournment of the trial was withdrawn. The trial therefore commenced before me on 21 July 2020 in hybrid form as described above and I pay tribute to the parties and their legal representatives in getting the case ready for trial in such short order and under very difficult circumstances.

140. I now turn to the substantive issues.

F. THE STANDING ISSUE

(a) Introduction

141. Brent's preliminary point is that neither Defendant has *locus* or standing to pursue an application for registration of the restriction. In a sense the point is somewhat moot because the real issue before the Court is whether Brent can show that it is the sole legal and beneficial owner of the Property. The application for registration of the restriction was the trigger for these proceedings and I have to decide whether there are any other beneficial interests in the Property, whether or not the Defendants were entitled to make the application in the first place. Birss J has already decided, and Brent has not challenged this, that the Charitable Trust Issue is properly before the Court and the Defendants have standing to argue it because of the Attorney General's decision to adopt a neutral stance.

142. In another sense however this issue goes to the heart of the question as to whether the Defendants can have a beneficial interest in the Property and so deprive Brent of sole beneficial ownership. Brent says that Mr Johnson is not a trustee of any property for HPCC and he cannot be a trustee for HPCC as HPCC is an unincorporated association. In relation to SCT, Brent says that HPCC could not assign anything because it could not own anything. Brent also challenges the form of the assignment and the status of SCT as a newly formed private company with no community role or history.

(b) The right to register a restriction

143. Sections 40 to 47 of the Land Registration Act 2002 (the **LRA**) deal with restrictions on registered land. The power of the Registrar to enter a restriction is contained in s.42 LRA and provides relevantly as follows (underlining added):

> "42(1) The registrar may enter a restriction in the register if it appears to him that it is necessary or desirable to do so for the purpose of –
>
> (a) preventing invalidity or unlawfulness in relation to dispositions of a registered estate or charge,
>
> (b) securing interests which are capable of being overreached on a disposition of a registered estate or charge are overreached, or
>
> (c) protecting a right or claim in relation to a registered estate or charge."

144. Section 43 LRA describes the persons who may apply to register a restriction as follows (underlining added):

> "43 **Applications**
>
> (1) A person may apply to the registrar for the entry of a restriction under section 42(1) if –
>
> (a) he is the relevant registered proprietor, or a person entitled to be registered as such proprietor,
>
> (b) the relevant registered proprietor, or a person entitled to be registered as such proprietor, consents to the application, or
>
> (c) he otherwise has a sufficient interest in the making of the entry.
>
> (2) Rules may –
>
> (a) require the making of an application under subsection (1) in such circumstances, and by such person, as the rules may provide;
>
> (b) make provision about the form of consent for the purposes of subsection (1)(b);
>
> (c) provide for classes of person to be regarded as included in subsection (1)(c);
>
> (d) specify standard forms of restriction."

145. As contemplated by s.43(2)(c), the Land Registration Rules 2003 (the **2003 Rules**) provides a long but non-exhaustive list of classes of persons considered to have a "*sufficient interest*" to apply for a restriction under s.43(1)(c) LRA together with the relevant Form of restriction to be entered in the Register. Rule 93(1)(a) of the 2003 Rules allows a Form A restriction to be entered by the following person:

> "any person who has an interest in a registered estate held under a trust of land where a sole proprietor or a survivor of joint proprietors (unless a trust corporation) will not be able to give a valid receipt for capital money, and who is applying for a restriction in Form A to be entered in the register of that registered estate"

146. In order to enter a Form A restriction, as the Defendants applied to do, they therefore needed to show that they held a beneficial interest in the Property.

147. The Defendants relied on the judgment of Briggs J (as he then was) in *Republic of Croatia v Republic of Serbia* [2010] Ch 200 (***Croatia v Serbia***) for the proposition that there need only be a "*tenuous connection*" between the applicant's interest and the registered estate for there to be a "*sufficient interest*" for the purposes of s.43(1)(c) LRA. However, I do not believe that this is the way Briggs J was defining "*sufficient interest*" for all forms of restriction. Rather he was pointing out that some classes in Rule 93 of the 2003 Rules appeared to be far removed from a claim to an actual proprietary interest in the registered estate. Also the facts of *Croatia v Serbia* are unusual and the case is difficult to apply to the context of this case.

148. The basic facts of *Croatia v Serbia* are these. When the Socialist Federal Republic of Yugoslavia (the **SFRY**) ceased to exist as a result of, what is called in international law, dismemberment in the 1990s, its six constituent states became the successor states to the SFRY. They entered into an Agreement on Succession Issues (the **ASI**) that set out a self-contained procedure for resolving disputes as to the distribution to successor states of diplomatic and consular properties around the world. The ASI was binding under international law. The Republic of Croatia applied to register a restriction in a number of Forms, including Form A, against a property in London held on a long lease registered in the name of SFRY and occupied by an official from the Serbian Embassy. Briggs J allowed an appeal from the adjudicator to the Land Registry holding that the English Court had power to award protective measures designed to preserve the *status quo* pending the resolution of the international law dispute under the ASI and that Croatia had a "*sufficient interest*" for the purposes of s.43(1)(c) LRA.

149. In relation to the question of "*sufficient interest*" Briggs J said as follows (underlining added):

> "43. I consider that it follows inevitably from those facts that Croatia (and also Serbia for that matter) have two types of claim in relation to the property. The first is a claim, pending any determination as to the distribution of the property in specie pursuant to the ASI, <u>to a beneficial share in the property</u> arising from their common understanding that the only candidates for ownership of the property of the SFRY upon its dismemberment are the successor states. The second is <u>a claim to full beneficial ownership of the property</u>, capable of being pursued by each of them pursuant to the ASI, which may or may not succeed. In my judgment it involves no breach of the non-justiciability principle for me to conclude that both those claims satisfy the threshold test of reasonableness, or arguability, such that they ought not to be regarded as fanciful.
>
> …

46. I turn therefore to the question of construction of the LRA and the 1993 Rules [sic][1], namely whether, having these two arguable claims in relation to the property, Croatia has a sufficient interest in obtaining entry of the restrictions which it seeks, or either of them.

47. Although the LRA contains no express definition of "sufficient interest" for the purposes of section 43(1)(c), it was common ground before me that recourse could properly be had to the purposes for which restrictions could be entered, as set out in section 42(1)(a) to (c), and to the examples of sufficient interest set out in rule 93 of the 2003 Rules, as contemplated by the rule making power set out in section 43(2)(c). It was also common ground that the question whether any postulated interest was a "sufficient interest" was not to be considered in the abstract, but rather by reference to the specific restrictions sought.

48. Section 42(1)(c) identifies as a relevant purpose for the entry of restrictions: "Protecting a right or claim in relation to a registered estate or charge." It is to be noted that the right or claim must exist "in relation to" a registered estate or charge, rather than be a right or claim to a registered estate or charge.

49. Study of rule 93 yields the following further illumination. First, rule 93 clearly demonstrates that a person may have a sufficient interest in obtaining the entry of a restriction without having, or even claiming, a proprietary interest in the registered estate. Persons falling within classes (d) to (i), (l), (m), (r), (s), (u) and (v) would not need to demonstrate any proprietary interest in the registered estate.

50. Secondly, some of the classes included within rule 93 suggest a very tenuous connection between the applicant's interest and the registered estate, of a type much less direct or immediate than that claimed by Croatia. For example, an applicant for a freezing order under class (i) need have nothing more than a purely monetary claim against the registered proprietor, having nothing to do with the registered estate.

…

54. In my judgment, the claims which I have identified that Croatia has in relation to the property, together with its status as a party to the ASI, give it a sufficient interest in the entry of a restriction in either or both of Form A and Form II, for the purpose of affording jurisdiction to the registrar to enter such restrictions, if thought necessary or desirable pursuant to section 42(1) of the LRA, and therefore to afford jurisdiction to the adjudicator, in the event of a dispute, to direct him to do so.

55. I consider that Croatia has a claim to a present interest in the property, a claim to have the property distributed to it in specie pursuant to the ASI and an interest in having the principles and machinery of the ASI carried into effect. The combination of those claims and interest gives rise to a sufficient interest

[1] This must be a mistake for the 2003 Rules.

> in the making of the entry or entries requested for the purposes of section 43(1)(c)…"

150. Briggs J was clear that he was not deciding the merits of the dispute as to which country owned the property (see para [39]). That would have to be decided under the dispute resolution procedures of the ASI. The only question for him was whether Croatia had a "*right or claim in relation to*" the leasehold interest in the property (s.42(1)(c) LRA), the protection of which gave it a "*sufficient interest*" within s.43(1)(c) LRA to register the form of restriction that it was seeking to register. In my view it is important that Briggs J found that Croatia had reasonable and arguable claims both to a beneficial interest in the registered estate and to ensuring that procedures under the ASI to determine the true owner of the property were carried into effect.

151. The references in the judgment to a "*tenuous connection*" are to other specific classes set out in rule 93 of the 2003 Rules and Briggs J drew attention to these in order to show that the issue of "*sufficient interest*" is very much tied to the specific restriction sought. He was not suggesting that only a tenuous connection need be shown in all cases and, if Deputy Master Rhys considered that he was (see para [57] of his judgment), then I respectfully disagree.

152. In this case, the Defendants are claiming a beneficial interest in the Property. Even though they are not counterclaiming in these proceedings for a declaration as to their beneficial interest in the Property, they do claim such a beneficial interest by way of their defence to the relief sought by Brent and, in my view, that claim, whether good or bad, could be within s.42(1)(c) LRA as a "*right or claim in relation to a registered estate*". Furthermore, if either or both Defendants are properly able to pursue such a claim to a beneficial interest, then I have no difficulty in holding that they would have a "*sufficient interest*" within the meaning of s.43(1)(c) LRA and rule 93(1)(a) of the 2003 Rules.

153. However, the critical point on the Standing Issue is whether either or both Defendants are capable of holding an interest in property such as is being claimed in these proceedings and which they are entitled to protect by the entry of a restriction. I will take each Defendant in turn.

(c) <u>The Standing of Mr Johnson</u>

154. Mr Johnson made the application to register the restriction "*as a trustee of the* [HPCC]". And he has been sued by Brent in that capacity. However, as referred to above in relation to Mr Johnson's evidence, his Re-Amended Defence stated that he should not be a party to these proceedings because he "*is simply a member only and not a trustee* [of HPCC]". In his evidence, Mr Johnson was quite stunned by this paragraph of the Re-Amended Defence (to which he had signed a Statement of Truth) and maintained that he is a trustee and indeed the chairman of HPCC.

155. I have not seen any appointment of Mr Johnson as a trustee of any property; nor have I seen a written constitution of HPCC that might have regulated the way property could be held by or on behalf of the members of HPCC. Being an unincorporated association, HPCC itself does not exist as a legal person. None of the other members of HPCC are parties to these proceedings and there is no indication that Mr Johnson has been

authorised to pursue a claim to a beneficial interest in any sort of representative capacity.

156. It is common ground that HPCC, as an unincorporated association, could not hold the legal title to the Property. The Defendants say that this was the reason the Property had to be put into Brent's name. However, the reason why an unincorporated association cannot itself hold legal title to property is because it has no legal personality. In my view, the same applies to beneficial or equitable interests in property; an unincorporated association cannot itself hold a beneficial or equitable interest in property because it is not a legal person capable of holding such an interest. There is confusion in the Defendants' case between a trust structure adopted by an unincorporated association to enable it to hold property, normally by a trustee holding property on behalf of the members, and an implied trust, such as the resulting or constructive trust being claimed, which still requires the beneficiary to be a legal person.

157. The trouble in this case is that there is no evidence of the terms of the constitution of HPCC, nor of any rules governing membership of HPCC or the internal relations between the members and perhaps the officers of HPCC. There are not any minutes or contemporaneous documentation recording decisions made or rules instituted in relation to HPCC. As explained above, this may have been deliberate as HPCC did not want to be run like other community associations.

158. The way that unincorporated associations hold property or assets is normally prescribed by its constitution or rules. It is clear that such property or assets can only be held by legal persons on behalf of legal persons, usually the members. Both Ms Holland QC and Mr Cottle referred me to the case of *Panton v Brophy* [2019] L&TR 24, a decision of Master Clark as to the way in which an unincorporated association (a rowing club) could effectively hold an interest in a lease of a boathouse. It was common ground in that case that the unincorporated association could not hold the legal interest in leasehold land, but Master Clark held that the lease could be held on trust for the members of the unincorporated association and their beneficial interest would be subject to the contractual obligations under its constitution or rules. Master Clark quoted from *Hanbury & Martin: Modern Equity*, 21st edn to explain the contractual analysis:

> "80. …Secondly, although an unincorporated association cannot hold a legal interest in leasehold land, it can have a beneficial interest in it, in the sense that the legal title is held on trust for the members of the association from time to time, subject to their contractual rights and liabilities to each other as members of the association: see, for instance, *Wise v Perpetual Trustee* [1903] A.C. 139 (PC), decided on the basis of this trust analysis.
>
> 81. This analysis is helpfully explained in *Hanbury & Martin: Modern Equity*, 21st edn, at para. 16-019:
>
> "**D. – Ownership by Members on Contractual Basis**
>
> The contractual analysis provides a method by which unincorporated associations can validly hold property without the necessity of discovering an intention to create a trust, and by which gifts to the association, in order to escape invalidity as purpose trusts, need not be

> regarded as taking effect as immediate distributive shares in favour of the members, which is unlikely to have been the donor's intention. Members of the association can:
>
> > "[b]and themselves together as an association or society, pay subscriptions and validly devote their funds in pursuit of some lawful non-charitable purpose. An obvious example is a members' social club" [referring to *Re Rechers Will Trusts* [1972] Ch 526 at 538]
>
> where it would in most cases be difficult to find an intention to create a trust. Their assets, whether donations or members' subscriptions, are held by the trustees or by the committee or officers of the club on the terms of the constitution or rules of the club, which are themselves a contract by the members with each other. A trust is interposed simply because it is normally inconvenient (and impossible in the case of land [referring to Law of Property Act 1925 s.34(2)]) for the assets to be vested in all the members. This is a bare trust and does not detract from the contractual analysis.
>
> This solution avoids some of the difficulties which arise from an analysis which regards the members as beneficiaries under a private trust. The members' rights are contractual, and of course they depend upon the rules of the association. A member will not usually be able to claim his share at any time; but the members as a whole control the committee's activities in accordance with the rules…"

82. Thus, the Council's intention that the Club should be its tenant could only be realised by a grant to a trustee to hold the leasehold estate on trust for the Club's members; and a grant to the Company alone fulfilled that intention."

159. Underpinning Master Clark's conclusion on this is that both legal and beneficial interests have to be held by legal persons. For the purposes of holding property or assets, the contractual analysis is a way of giving legal personality to unincorporated associations by regulating the holding of such property or assets by or on behalf of its members. In my view, however, the contractual analysis is not capable of applying to an alleged beneficial interest or equity being claimed under a resulting or constructive trust. I do not see how HPCC, which does not exist in law, can hold an interest under a resulting or constructive trust. I have not been provided with any authority that supports the proposition that an unincorporated association can hold such a beneficial interest.

160. Deputy Master Rhys, who dealt with the Standing Issue on the summary judgment application, looked at the matter the other way round on the basis that there was no authority that said that an unincorporated association could not be an owner in equity of property. The learned Deputy Master said as follows (para 29):

> "Necessarily, if trustees are holding association property on trust for the members or for the purposes of the association, the legal estate owners are not themselves the beneficial owners. The beneficial ownership rests with the members, the committee or the association generally. Although this analysis no doubt refers to trustees expressly constituted for that purpose, I see no reason why the same should

> not apply where the trust is created by implication, rather than expressly. It follows, therefore, that Brent's primary submission – that the trust analysis is impossible because HPCC could never have been the beneficial owner of the Property – does not succeed."

Deputy Master Rhys also concluded that both Defendants had a sufficient interest to apply for the restriction, saying (in para 57) that:

> "It would defeat the purpose of the restriction regime if a party in the position of HPCC could lose all protection because there was not a properly constituted trustee or other officer who was able to make the necessary application to the Land Registry. As far as I am aware the only application for a restriction is that made by Mr Johnson but in my judgment the same reasoning would apply to Stonebridge."

161. I agree with Ms Holland QC's submission that, with respect, Deputy Master Rhys' conclusions fail to grasp the distinction between a trust for the members that gives effective legal personality to an unincorporated association thereby enabling it to hold property and an implied trust that is said to arise in the circumstances of this case in favour of HPCC as if it had legal personality. It is not said that there is an implied trust for the members of HPCC; Mr Johnson is clearly asserting a beneficial interest that is ultimately owned by HPCC itself. In my judgment that is not possible, certainly when there is no evidence of the constitution or rules that might bind such members in how they can hold such a beneficial interest. It is not easy to see how the so-called contractual analysis can be superimposed onto claims to a beneficial interest under a resulting or constructive trust.

162. Accordingly, I hold that as HPCC itself cannot be entitled to a beneficial interest in the Property on any basis because it does not exist, so Mr Johnson, whether as a trustee, chairman or otherwise can have no sufficient interest to apply for a restriction or indeed to defend these proceedings insofar as they relate to a private trust of the Property for HPCC. The charitable purposes trust is another matter.

(d) <u>The standing of SCT</u>

163. As HPCC itself cannot own anything, including a beneficial interest in the Property, it cannot transfer anything to a third party such as SCT.

164. Even though the Defendants' solicitors, DWFM Beckman, wrote on 16 March 2018, the day SCT was incorporated, to say that Mr Johnson on behalf of HPCC had transferred its interest in the Property to SCT and that SCT had taken the place of HPCC and represented the community, it was over a year later when such a transfer was purportedly effected. There are two documents dated 8 May 2019, that is after these proceedings had commenced and the summary judgment application had been heard, which purported to effect the transfer:

> (1) "*Minutes of a Board Meeting*" that are signed by 7 individuals (an eighth signature is crossed out) including Mr Johnson and Mr Anderson, I assume as the Board of HPCC. There is reference in the minutes to setting up a new body called the "*Bridge Park Community Council*" to "*save Bridge Park and work to establish [HPCC] and the Community's legal and beneficial interest in [the Property]… HPCC understands the importance of saving Bridge Park for the*

community and as such agree for this new entity BPCC to take over the fight for Bridge Park along with the setup or an incorporated entity to take forward the legal fight and hold the interests of HPCC". The Minutes then record the following "*Appointments*":

"i) HPCC hereby agrees for BPCC to be its successor in all matters relating to Bridge Park Land, Buildings and control.

ii) The individual members of HPCC agree to transfer all interests in Bridge Park to an entity called: [SCT]. SCT will hold safe all interest it receives then transfer 100% this interest to a suitable Charity to take control of future interests whether restored, won, negotiate or recovered from Brent Council or otherwise.

iii) HPCC hereby agrees for Leonard Johnson and the other Eight HPCC members to represent and act on behalf of HPCC and other matters concerning HPCC and to carry out these actions in accordance with any majority vote of HPCC members.

iv) HPCC agree to be bound by the outcome of any negotiations and decisions made in relation to Bridge Park with between Brent Council, SCT, BPCC and any legal counsel

VOTE: It has been agreed that SCT will now become successor to HPCC in relation to Bridge Park."

(2) A "*Beneficial Interest Transfer Agreement*" between HPCC as "*Transferor*" and SCT as "*Transferee*". The Recitals stated as follows:

"(A) The Transferor is the owner of the beneficial interest in [the Property].

(B) The Transferor has agreed to transfer all beneficial interest including but not limited to any right to assert the existence of a constructive or resulting trust.

(C) The Transferor has agreed to transfer all beneficial and any legal interest held in Bridge Park and Buildings thereon and the Transferee has agreed to accept the transfer to it of the beneficial interest in Bridge Park, in each case on the terms and subject to the conditions set out in this Agreement."

The relevant operative parts of the Agreement were as follows:

"**2 Transfer of the beneficial interest in Bridge Park**

2.1 Upon the terms and subject to the conditions of this Agreement the Transferor agrees to transfer and the Transferee agrees to accept the transfer to it of the Transferor's beneficial interest in Bridge Park

2.2 The Transferor shall transfer its beneficial interest in Bridge Park with all rights and advantages attaching to it on the date of this Agreement.

2.3 The consideration for the transfer of the beneficial interest in Bridge Park shall be as [£1] receipt of which is hereby acknowledged and confirmed by the Transferor.

3 Transferor's warranties

3.1 The Transferor warrants to the Transferee that the warranties in Clause 3.2 are true and not misleading as at the date of this Agreement.

3.2 The Transferor warrants to the Transferee that:

3.2.1 the Transferor is the beneficial owner of Bridge Park; and

…

3.4 The Transferee warrants to the Transferor that upon realisation of the beneficial interest it agrees to hold good and secure all beneficial interest in Bridge Park until this can all (100%) be safely transferred to a new and separate charity called "Stonebridge Community Trust" or such name to be agreed by the chair of and or Bridge Park Community Council trustees at the time."

The Transfer Agreement was signed by Mr Johnson although it does not identify the capacity in which he signed.

165. Even though the Minutes at ii) above refer to the "*individual members of HPCC [agreeing] to transfer all interests in Bridge Park*", the Transfer Agreement itself is clearly drafted on the assumption that HPCC itself, and not its individual members, own the beneficial interest in Bridge Park that it purports to transfer to SCT. If HPCC does not own any such interest in Bridge Park for the reasons set out above, it obviously cannot transfer any such interest and the Transfer Agreement must be of no effect. It is analogous to the *nemo dat quod non habet* rule.

166. Furthermore, as Ms Holland QC submitted, if the transfer was effectively on behalf of the members of HPCC (whoever they are), it did not make clear that individual beneficial interests were being disposed of and it clearly was not signed by those members purporting to transfer their interests. It would therefore fall foul of section 53(1)(c) of the Law of Property Act 1925 even if the underlying equitable interest was created by virtue of a constructive or resulting trust.

167. Ms Holland QC also made the valid point that SCT is a newly incorporated private non-charitable company without any community role or presence and it cannot be right for such a company to benefit from a substantial equitable interest in the Property when it has no public role and had no involvement in the events leading to the acquisition of Bridge Park. I would also query, although I received no submissions on this, as to

whether it is in any event possible for a claim to an equitable interest arising under a constructive or resulting trust is capable of assignment, as equity is concerned with the actual personal relationship and dealings between the alleged trustee and beneficiary and the consciences of the transacting parties.

168. In any event, having found that HPCC cannot itself own such a beneficial interest in the Property, clearly SCT cannot be in any better position and it too has no standing to apply to register a restriction or to defend these proceedings insofar as they relate to a private trust of the Property.

G. THE RESULTING TRUST ISSUE

169. Even though I have already found that the Defendants have no standing to assert any beneficial interest in the Property, I will consider each of the purported bases that they relied upon for such a beneficial interest. In fairness to Mr Cottle for the Defendants, his main submission in closing was on the Charitable Trust Issue, which I deal with below, but it is convenient to deal with the private trust issues first.

(a) The Defendants' pleading of resulting trust

170. Although it is not clearly expressed in the Re-Amended Defence, the Defendants' case on resulting trust appears to be based on two main propositions:

(1) That Brent did not contribute the full purchase price and that the grants obtained from DofE and the GLC were really for HPCC and should be considered as contributions by HPCC to the purchase price for the Property; and

(2) That the Property was put into Brent's name because HPCC as an unincorporated association could not hold legal title to the Property.

171. By way of an aside, if that was truly the reason why Brent decided to take the Property in its sole name, I would have expected there to be some sort of written record that this was the reason why and a form of declaration of trust identifying HPCC, its successor company or the members of HPCC as beneficially owning whatever percentage it was agreed it should own. Needless to say, no such document exists and could not have been prepared at the time as the Property has always been recorded, including in its accounts, as a capital asset of Brent's with no acknowledgment of any other interest in the Property.

172. The Defendants' Re-Amended Defence pleads in para. 2.1(h) a rolled up allegation of both constructive and resulting trust. In relation to resulting trust, it states as follows (this is before the amendments sought to be made by the Defendants in their closing submissions)[2]:

> "Alternatively, the London Borough of Brent holds the [Property] as "*Resulting Trustee*" on the grounds that for convenience it was transferred in the sole name of [Brent] largely because at the date and time of the purchase of the [Property] on

[2] The square brackets and italics are in the original save for the references to "[Brent]" and "[Property]" which I have inserted

> [*5th May 1982*] *HPCC was an Unincorporated Association* which in law was not an entity that was able to hold the [Property] in its *sole* name or *jointly* with [Brent]. The [Property] was therefore transferred into the sole name of [Brent] with the *promise* of transferring it over to HPCC at some future date after HPCC adopted themselves as a *Company Limited by Guarantee*. A Company known as [the Steering Group Company] was incorporated on [*21 January 1983*] (*Eight months after the [Property] was purchased and transferred on [5th May 1982] in the sole name of [Brent]*; therefore Brent became "*Custodian Trustees*" for the Unincorporated Association known as HPCC and/or the People of the Local Brent Community and they now *hold* the said [Property] on Trust. To date, despite repeated promises made to HPCC by ([Brent]) since [1982] the [Property] has not been transferred into HPCC's name *notwithstanding* that the Funds that was [sic] used to Purchase and Develop the [Property] was provided by HPCC and/or on their behalf in full as Grants under the Urban Development Scheme as set out at paragraph [2.1] (a-g above)]. *The Defendant* [sic] *denies that the [Property] belong* [sic] *to* [Brent] Legally and beneficially alone."

173. In earlier subparagraphs of the Re-Amended Defence, the Defendants plead that the "*Funds were given to HPCC on behalf of the Urban Programme monies, applied for through the GLC, DOE and [Brent]*" and then:

> "[Brent] then received and accepted Grant monies applied for in the name of HPCC, on behalf of HPCC, from various organisations as referred to at paragraph [2.1(b)], HPCC on behalf of the Local Community are the beneficiaries of those said Grants. Those Funds were therefore *held* in Trust by [Brent] and they formed the purchase money of £1,800,000 that was used to acquire the [Property], on behalf of HPCC."

174. The claim to a resulting trust is therefore critically dependent on the monies received by way of grant from bodies other than Brent, being effectively HPCC's monies that were its contribution to the purchase price. Although the Re-Amended Defence alleges that the whole Property was held on resulting trust for HPCC, it was accepted by Mr Cottle in his submissions and in his proposed Re-Re-Amended Defence (and in fairness by Mr Johnson in his evidence) that Brent did contribute £834,500 of the £1.8 million purchase price (ie 46%) and that their resulting trust claim was therefore limited to the proportion of the funds not provided by Brent.

(b) <u>The terms of the Transfer</u>

175. Ms Holland QC relied on an overarching point which she submitted was applicable to all the Defendants' trust arguments, namely that the terms of the 1982 Transfer Deed and the fact that it was expressly made pursuant to Brent's statutory power under section 120 of the Local Government Act 1972 preclude any assertion that Brent intended that the Property was to be held on any form of trust.

176. Section 120 of the Local Government Act 1972 is in the following terms:

> "120(1) For the purposes of –
>
> (a) any of their functions under this or any other enactment, or

(b) the benefit, improvement or development of their area,

a principal council may acquire by agreement any land, whether situated inside or outside their area."

177. Ms Holland QC referred me to the observations of Sir Robert Megarry V-C in *Tito v Waddell (No. 2)* [1977] Ch 106, at 217G-H concerning the forms of trust that government bodies might be subject to:

> "The burden, said [Counsel for the Defendant], was thus in effect on [Counsel for the Plaintiffs] to show that there was a true trust. Another way of putting much the same point is to emphasise the possible explanations that there are for a transaction. In the case of an individual, there will often be only two feasible explanations, either that he holds on a true trust, or else that he holds on no trust at all, but at most subject to a mere moral obligation. In the case of the Crown, there is a third possible explanation, namely that there is a trust in the higher sense, or governmental obligation. Though this latter type of obligation is not enforceable in the courts, many other means are available of persuading the Crown to honour its governmental obligations, should it fail to do so ex mero motu."

178. Based on these observations, the absence of any words denoting the existence of a trust in the 1982 Transfer and the specific statutory power that was used by Brent to acquire the Property, Ms Holland QC submitted that Brent was indeed purely acting under the s.120 power referred to in the 1982 Transfer Deed and not pursuant to any express or implied trust obligation. She also submitted that this precluded the existence of any charitable trust.

179. While I can see that these are powerful indicators that no trust was intended by Brent to come into place, the lack of reference to the word "*trust*" and the identification of the statutory power relied upon by Brent to acquire the Property do not conclusively rule out the possibility that some form of trust could be imposed by the Court on one or more of the bases put forward by the Defendants.

(c) <u>The Grants</u>

180. In relation to a resulting trust, the actual financial contributions by the parties are the critical factors. The documentary evidence consistently indicates that both Brent and HPCC recognised that Brent would be getting assistance from "*other agencies*" in order to be able to buy the Property for the community. For example:

(1) The December 1981 Report referred to: "*Brent Council, with assistance from other agencies, should buy the Bus Depot and [HPCC] should then establish a community co-operative to manage it*" (see para [64] above);

(2) In his presentation to the PRC in October 1981 Mr Johnson: "*stressed the importance to the community in Stonebridge of the Council's acquiring the Stonebridge Bus Garage for community use*" (see para [60] above);

(3) In Joint Report No. 15/82 dated 9 February 1982 to the PRC, the recommendation was: "*that the Council purchases the Bus Depot provided*

financial assistance is forthcoming from the Department of Environment and the GLC." (see para [67] above);

(4) The DofE was comforted by the fact that Brent owned the Property: "*the major safeguard for public funds invested in the project is that ownership of the property, which would represent a substantial capital asset, rests with Brent*" (see para [104] above).

181. In a Report of the Comptroller and Auditor General of the National Audit Office entitled "*Department of the Environment: Urban Programme*" dated 16 July 1985, the applicable Urban Aid programme, called "UP", was conveniently described as follows:

> "The original, ("Traditional"), UP was introduced in 1968 and enabled local authorities to receive grants for projects meeting social needs in any urban area. In 1978 the then Government introduced an "Enhanced" UP embracing economic and environmental as well as social projects. This would be directed towards the inner urban areas where the problems of deprivation were most severe…Eligible expenditure incurred by local authorities on the UP would be grant aided by DoE at the rate of 75%."

182. Brent was a "*designated district authority*" under section 1 of the Inner Urban Areas Act 1978 making it entitled to receive grant aid from the DofE for specific projects. It is clear from the correspondence between Brent and the DofE (referred to in paras [81] to [83] above) that Brent itself had a certain allocation of Urban Aid grant for any particular financial year and that because it had underspent its allocation in 1981/82 it was asking that the underspent amount could instead be applied to the new Bridge Park project. This indicates quite strongly that the monies were both applied for and received by Brent itself rather than the named project on which they were going to be spent.

183. The application itself dated 5 February 1982 was made by Brent and was expressly stated to be for "*The Stonebridge Bus Depot Project*" and that the grant money "*together with help from other agencies*" was to be used by Brent to buy the Property (see para [79] above). The Certificate was in standard form and referred to Brent's "*decision to offer financial assistance to the* [HPCC]". While the Defendants rely on that reference to HPCC as indicating that this was money that was really going to HPCC not Brent, I do not consider that the fundamental structure of Urban Aid grants was thereby altered. There had to be a project to which the grant money was going to be applied but clearly no one imagined that such large amounts of money were actually going to be paid to or treated as having been paid to a new and completely inexperienced unincorporated association that had no financial track record.

184. Mr Cottle put to various of Brent's witnesses a document appended to Report 41/85 to the PRC dated 17 April 1985 which was headed "Standard Conditions for Grants to Local Organisations". One such condition was in the following terms:

> "3.13 All land and buildings acquired with Urban Programme funds must be vested in the Council's ownership and will be leased to the organisation at a peppercorn rental."

While that may indicate that the local organisation was meant to benefit from the acquisition by the Council using Urban Aid funding, it also makes clear that the Council

is to own the property acquired. While in this case there was no lease to HPCC, or the Steering Group Company, it did effectively occupy the Property for free and it was entitled to receive all the income from its management of the Bridge Park complex.

185. I said above that I felt that Mr Boulter, Brent's Director of Finance at the time of the acquisition, had gone too far in suggesting that "*urban aid was nothing to do with HPCC*" and that it was "*not for HPCC's purposes*" and that "*all urban aid applications were by Brent for Brent's purposes*". The application could not have been made unless there was a specific project to be funded and Brent could not have used that money for any other project. But what I think Mr Boulter was trying to say was that the grant could only be applied for and obtained by Brent which was ultimately responsible to account to the DofE in respect of the use of those monies. As Lord Bichard put it, Brent was "*behind the project and was in many respects acting as a guarantor to government departments and the GLC at the time…government would not have agreed to an urban aid grant going to a group that was new, unknown – and so the money went to the Council*". Even Mr Gutch, who was giving evidence for the Defendants, accepted that "*all urban programme funding apart from funding for equipment was vested in the local authority.*"

186. In relation to the £700,000 grant funding from the GLC, the description of the "*Community Project*" in the Schedule to the Deed between Brent and the GLC made no reference to HPCC or any specific community organisation. While all Brent's witnesses praised the efforts and central role played by Mr Johnson and HPCC in getting the project off the ground and persuading politicians and others to support the project, Brent did not anticipate HPCC being involved with managing the project post-acquisition (this was to be a new community co-operative); nor did it rule out some other form of project or even having to sell the Property if the project failed (see its contingency planning in Joint Report 15/82 in para [70] above). In cross-examination, Mr Gutch explained:

> "At this very early stage, the Council was about to make a commitment to a project they didn't know whether it was going to work. So part of report [15/82] was setting out options. What would Council do if it went pear-shaped. They could sell the site. Due diligent thing to do in such a potentially risky situation."

187. Accordingly, I consider that both the evidence and the legal structure around these grants to be clear and consistent. Brent was to acquire the Property with the assistance of capital grant funding; and a new community entity, not HPCC, would run and manage the Property for the benefit of the local community. Such grant funding was available to local authorities in these circumstances and there are very good reasons why Brent would seek to take advantage of such funding rather than having to draw on the funds provided by its ratepayers. Despite Mr Bryson using the word "*conduit*" to describe the role played by Brent in relation to Urban Aid grants, I do not believe that was accurate; I think Ms Downs had a point when she said in evidence in this respect: "*I don't accept Brent was merely a conduit – Brent has revenue funded the project for many many years – it has put in millions and millions of pounds.*"

(d) <u>Conclusion on resulting trust</u>

188. In my judgment, there is no basis for suggesting that HPCC has funded part of the acquisition cost of the Property. The grants went to Brent to enable it to acquire the

Property for the purposes of the project which was to be managed by a new community co-operative for the benefit of the community. If there was no actual financial contribution made by HPCC to the purchase of the Property, there can be no question of resulting trust arising and I reject the Defendants' case in this respect.

189. As to the other part of the Defendants' pleaded allegation, namely that Brent was only holding the Property in its name because HPCC, as an unincorporated association, could not hold property in its name, there is simply no evidence of this. This was not a reason put forward in any of the contemporaneous documentation and it is impossible to imagine that those involved at the time for Brent could have allowed Brent to proceed with the acquisition on the terms it did without recording that purported reason for it being in Brent's name. It would, in any event, have been beyond those individuals' authority to have made any representations to Mr Johnson or anyone else that this was being done. The representations that were or were not made at the time are the subject matter of the other private trust issues to which I now turn.

H. THE CONSTRUCTIVE TRUST ISSUE

(a) Introduction

190. It is not easy to distil from the Re-Amended Defence the type of constructive trust that the Defendants are asserting exists in their favour. From Mr Cottle's submissions it appears that reliance is placed on two types, both of which are related - indeed on one view, they are both examples of the same thing - and in respect of which the same or similar facts are said to be relevant:

(1) First, a *Pallant v Morgan* equity[3] based on an alleged joint venture type arrangement before the acquisition;

(2) Second, a common intention constructive trust based on the domestic purchase cases such as *Gissing v Gissing* [1971] AC 886 and *Lloyds Bank plc v Rosset* [1991] 1 A.C. 107.

191. There is a substantial overlap between the *Pallant v Morgan* equity and the proprietary estoppel claim, both in terms of the factual basis for the claims but also on the law. In *Banner Homes Plc v Luff Developments Ltd* [2000] Ch 372 (***Banner Homes***) at p.384A, Chadwick LJ referred to the overlap:

> "Robert Walker L.J. pointed out in *Yaxley v Gotts* [2000] Ch 162, 176C, that the principles upon which equity acts in what Millett L.J. had described, in *Paragon Finance plc v D.B. Thakerar & Co.* [1999] 1 All E.R. 400, as the first class of constructive trust case have much in common with those of proprietary estoppel. He then said [2000] Ch. 162, 176:
>
> > "Plainly there are large areas where the two concepts do not overlap…But in the area of a joint enterprise for the acquisition of land (which may be, but is not necessarily, the matrimonial home) the two concepts coincide. Lord Diplock's very well known statement in *Gissing v Gissing* [1971] A.C. 886,

[3] Derived from the decision of Harman J (as he then was) in *Pallant v Morgan* [1953] Ch 43

> 905 brings this out: 'A resulting, implied or constructive trust – and it is unnecessary for present purposes to distinguish between these three classes of trust – is created by a transaction between the trustee and the cestui que trust in connection with the acquisition of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will have so conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so doing he was acquiring a beneficial interest in the land.'"

Although this has been doubted, by for example Etherton LJ in *Crossco No.4 Unlimited v Jolan Limited* [2011] EWCA Civ 1619 (***Crossco***) at para. [80] (although see below), the way the different claims have been advanced in this case show that there must be considerable overlap. The Defendants seem to agree, as they pleaded in subparagraph 2.1(k)(i) of the Re-Amended Defence that they "*aver that the component elements* [of proprietary estoppel] *are similar to those of constructive trust*".

192. These are also the areas where the Defendants are seeking permission to amend the Re-Amended Defence to incorporate their change of case as to the representations that were allegedly made by Brent prior to acquisition, that is whether the full legal and beneficial ownership would be transferred to HPCC or whether it would be a lease with an option to purchase the freehold. I will consider that application, made orally, within this section of the judgment.

193. First I will analyse some of the relevant legal concepts as to the constructive trusts being claimed.

(b) Relevant legal principles

194. As I indicated in para [9] above, equitable and proprietary rights are only recognised pursuant to established legal principle not by vague notions of fairness or the exercise of judicial discretion. This was encapsulated in Lord Scott's speech in *Cobbe v Yeoman's Row Management Ltd* [2008] 1 WLR 1752 at para [17] where he set out, with approval, the following quote from Deane J in the High Court of Australia's case of *Muschinski v Dodds* (1985) 160 CLR 583*:*

> "The fact that the constructive trust remains predominantly remedial does not, however, mean that it represents a medium for the indulgence of idiosyncratic notions of fairness and justice. As an equitable remedy, it is available only when warranted by established equitable principles or by the legitimate processes of legal reasoning, by analogy, induction and deduction, from the starting point of a proper understanding of the conceptual foundations of such principles … Under the law of this country – as, I venture to think, under the present law of England …proprietary rights fall to be governed by principles of law and not by some mix of judicial discretion, subjective views about which party 'ought to win'…and 'the formless void' of individual moral opinion…"

195. The circumstances under which a *Pallant v Morgan* equity will arise has been helpfully explained in *Lewin on Trusts* 20th edn, para 10-091:

> "Where two parties enter into a joint venture arrangement whereby it is contemplated that one of them will acquire property and that, if he does so, the other will obtain an interest in the property, and pursuant to the arrangement the property is acquired, whether by the acquiring party himself or by a company owned by him, then the acquiring party may hold the property on constructive trust in accordance with the bargain under what is sometimes referred to as a "*Pallant v Morgan* equity"…It has been said that when such a constructive trust arises, the defendant's possession of the property is "coloured from the first by the trust and confidence by means of which he obtained it, and his subsequent appropriation of the property to his own use is a breach of that trust."[4] Accordingly, consistent with an analysis founded on a constructive trust, the circumstances must be such as to make it inequitable for the acquiring party to retain the property for himself in a manner inconsistent with the arrangement on which the non-acquiring party has acted. It will be inequitable for the acquiring party to retain the property for himself if (i) the non-acquiring party, in reliance on the arrangement, does or omits to do something which confers an advantage on the acquiring party in relation to the acquisition of the property, or is detrimental to the ability of the non-acquiring party to acquire the property on equal terms (most obviously, agreeing to keep out of the market for the property), and (ii) the acquiring party has not informed the non-acquiring party before the acquisition (or at least before it is too late for the parties to be restored to a position of no advantage/no disadvantage) that he no longer intends to honour the arrangement."

196. There has been some discussion in the authorities as to whether the *Pallant v Morgan* equity is connected to the common intention constructive trust or whether it should more properly be seen as deriving from the law of agency and breach of fiduciary duty - see the judgments of Etherton LJ (as he then was) in *Crossco* (supra) at paras. [85]-[87] and of Lewison LJ in *Generator Developments v Lidl UK GMBH* [2018] P&CR 7 (CA) (***Generator Developments***) at paras. [42] and [71]. In those passages, the learned Lord Justices were re-interpreting Chadwick LJ's judgment in *Banner Homes* in the light of the House of Lords and Supreme Court later authorities of *Stack v Dowden* [2007] 2 AC 432 and *Jones v Kernott* [2011] 3 WLR 1121. However, the majority in *Crossco* (Arden and McFarlane LJJ) and Lewison LJ himself in *Generator Developments* were of the view that they, as the Court of Appeal, were bound by their earlier decision in *Banner Homes* and it was not open to them to reinterpret the core basis of the *Pallant v Morgan* equity. I note also that Kitchen LJ (as he then was) in *Farrar v Miller [2018]* EWCA Civ 172 said after reviewing some of these authorities:

> "What can be said, however, is that many of the cases giving rise to a *Pallant v Morgan* style equity will have at their heart a fiduciary relationship…"

197. This is not the place to explore these matters further. But what I think the debate highlights is that the cases in which a *Pallant v Morgan* equity has been found to exist seem to be commercial cases involving commercial parties who combine together in a proposed joint venture, thereby giving rise to some form of fiduciary relationship; whereas the common intention constructive trust cases are largely concerned with domestic, family purchases of property where the common intention has to be inferred from the facts or imputed to the parties. In those latter types of case, there is not normally any actual agreement reached as to beneficial interests; nor is there any sort

[4] *Paragon finance Plc v D.B. Thakerar & Co.* [1999] 1 All ER 400 at 408-409, per Millett LJ (as he then was).

of negotiation whether involving lawyers or not. On the face of it the two types of constructive trust therefore appear to be rather different creatures.

198. *Banner Homes* is certainly binding on me and Chadwick LJ set out five propositions in relation to establishing a *Pallant v Morgan* equity (see p.397G-399D), which I summarise below:

(1) Where neither party owns the property in question, a "*Pallant v Morgan equity may arise where the arrangement or understanding on which it is based precedes the acquisition of the relevant property by one party to the arrangement. It is the pre-acquisition arrangement which colours the subsequent acquisition by the defendant and leads to his being treated as a trustee if he seeks to act inconsistently with it*."

(2) The arrangement or understanding does not need to be contractually enforceable. If it was, a *Pallant v Morgan* equity is unlikely to be necessary. Chadwick LJ went on to say: "*In particular it is no bar to a Pallant v Morgan equity that the pre-acquisition arrangement is too uncertain to be enforced as a contract*" and he referred to *Pallant v Morgan* itself and another case and then continued "*nor that it is plainly not intended to have contractual effect.*"

(3) The third proposition was described as follows:

> "It is necessary that the pre-acquisition arrangement or understanding should contemplate that one party ("the acquiring party") will take steps to acquire the relevant property; and that, if he does so, the other party ("the non-acquiring party") will obtain some interest in that property. Further it is necessary that (whatever private reservations the acquiring party may have) he has not informed the non-acquiring party before the acquisition (or, perhaps more accurately, before it is too late for the parties to be restored to a position of no advantage/no detriment) that he no longer intends to honour the arrangement or understanding."

(4) In reliance on the pre-acquisition arrangement or understanding, there has to have been either an advantage conferred on the acquiring party in relation to the acquisition or a detriment suffered by the non-acquiring party in not being able to acquire the property on equal terms.

(5) It is not however necessary for the advantage or detriment to be the non-acquiring party keeping out of the market at the time of the acquisition. Furthermore, even though they are normally correlative, there does not have to have been both advantage and detriment; either will suffice. Chadwick LJ said:

> "What is essential is that the circumstances make it inequitable for the acquiring party to retain the property for himself in a manner inconsistent with the arrangement or understanding on which the non-acquiring party has acted. Those circumstances may arise where the non-acquiring party was never "in the market" for the whole of the property to be acquired; but (on the faith of an arrangement or understanding that he shall have a part of that property) provides support in relation to the acquisition of the whole which is of advantage to the acquiring party. They may arise where the assistance

> provided to the acquiring party (in pursuance of the arrangement or understanding) involves no detriment to the non-acquiring party; or where the non-acquiring party acts to his detriment (in pursuance of the arrangement or understanding) without the acquiring party obtaining any advantage therefrom."

199. Mr Cottle particularly relied on proposition (2) that the pre-acquisition arrangement does not have to be an enforceable contract, whether on the basis of being too vague or the parties not intending it to have legal effect. However Lord Scott in the *Cobbe* case (supra) considered that there could be no constructive trust where the non-acquiring party did not expect to acquire a proprietary interest save by a legally enforceable contract:

> "…that an unenforceable promise to perform a legally unenforceable agreement – which is what an agreement "binding in honour" comes to – can give no greater advantage than the unenforceable agreement…and that Mr Cobbe never expected to acquire an interest in the property otherwise than under a legally enforceable contract."

200. In the *Generator Developments* case (supra), Lewison LJ seemed to disagree with Chadwick LJ in relation to whether the *Pallant v Morgan* equity can arise where the agreement or arrangement "*was not intended to have contractual effect*". He agreed with the following extract from the judgment of Arden LJ (as she then was) in *Herbert v Doyle* [2010] EWCA Civ 1095 commenting on the speeches in *Cobbe*:

> "In my judgment, there is a common thread running through the speeches of Lord Scott and Lord Walker. Applying what Lord Walker said in relation to proprietary estoppel also to constructive trust, that common thread is that, if the parties intend to make a formal agreement setting out the terms on which one or more of the parties is to acquire an interest in property, or, if further terms for that acquisition remain to be agreed between them so that the interest in property is not clearly identified, or if the parties did not expect their agreement to be immediately binding, neither party can rely on constructive trust as a means of enforcing their original agreement."

For the same reason, Lewison LJ was of the view that the words "*subject to contract*" used during negotiations for a joint venture would be a strong contra-indicator of the existence of a constructive trust because both parties accepted that no concluded agreement had yet been reached and that it would not be enforceable – see paras. [46] and [79] of *Generator Developments* (supra).

201. It is also necessary that the pre-acquisition arrangement or understanding was assented to by a person or persons capable of binding the acquiring party or who at least have ostensible authority to do so – see para [82] of *Generator Developments* (supra).

202. Mr Cottle submitted that HPCC, being a new and inexperienced organisation that did not have lawyers acting for it before the acquisition, should not be treated as a commercial party and that the common intention constructive trust cases were therefore applicable to the circumstances of this case. While I accept that HPCC was an unsophisticated party, I do not think that the acquisition of the Property could be considered a domestic purchase or anything other than a commercial transaction.

Accordingly, the principles set out above in relation to the *Pallant v Morgan* equity are the applicable ones and I propose to test the facts in relation to a pre-acquisition arrangement or understanding by reference to those principles.

203. Ms Holland QC also submitted that *Tito v Waddell (No.2)* (supra) was relevant in this respect as the Crown or a local authority may simply be administering the property in the exercise of their statutory or governmental functions and there would be no basis for finding such functions to be subject to a *Pallant v Morgan* equity. While I see the force of that (and I have not seen any authorities in this area involving the Crown or a local authority) I do not feel able to rule out the possibility that a *Pallant v Morgan* equity could arise against such a body and that it too should be regarded as a commercial party.

(c) The Defendants' application to amend the Re-Amended Defence

204. Towards the end of Brent's case, Ms Holland QC raised the question as to whether the Defendants' case had now changed markedly from the way it had been pleaded and she not unreasonably sought clarification as to this before she had to cross-examine the Defendants' witnesses. In response, Mr Cottle accepted that the case had changed but that this was apparent from both his skeleton argument, Mr Johnson's witness statement and the way he had cross-examined Brent's witnesses, in particular Ms Abbott. Mr Cottle did however accept that the Re-Amended Defence did not reflect this change of case and he agreed to provide a draft Re-Re-Amended Defence before the Defendants' witnesses were called.

205. In the event, I and Ms Holland QC were provided with a number of drafts of the Re-Re-Amended Defence, one before the Defendants' witnesses were called and others in the course of the Defendants' closing submissions. Mr Cottle made the application to re-amend during the course of his closing submissions. This was opposed by Ms Holland QC on the basis that the proposed amendments were incoherent, misconceived and unsupported by the evidence. I said that I would not take up time deciding whether permission should be granted or not but I would consider the question in the course of my judgment. I do not believe that either party was disadvantaged by my taking this course (and neither suggested that they were) particularly as Ms Holland QC was able to make detailed submissions on the proposed Re-Re-Amended Defence and I have considered its merits in this judgment.

206. The Defendants' original pleaded case on constructive trust, which as stated above, was rolled up into the resulting trust case making the two difficult to disentangle, seemed to amount to the following:

(a) Brent acquired the Property "*on behalf of HPCC*" because HPCC as an unincorporated association, could not hold property in its own name;

(b) Funding for the acquisition "*did not belong to*" Brent; rather it belonged to HPCC because it had been "*instrumental in sourcing and securing the purchase funds"*;

(c) Such funding was given to Brent to acquire the Property "*for the community*";

(d) In subparagraph 2.1(f) of the Re-Amended Defence, the Defendants averred:

"Circa 1980, Brent explained to HPCC, being an Unincorporated Association that they were unable to hold the Assets[5]. It was therefore agreed in order to safeguard the project that Brent would hold the monies and the assets on behalf of HPCC, provide a mentor for HPCC, to enable them to create an entity fit for purpose, at which point they would transfer full interest to HPCC."

(e) Under the heading "*Legitimate Expectation*" but apparently related to the constructive trust claim, the Defendants pleaded:

"…[Brent] made both written and oral promises to HPCC that it had every intention to hand over the Land and Premises to HPCC as the Trustees to look after for the benefit of the Local Community[6]."

207. As noted above the principal proposed amendments concern changing the representation that Brent would transfer the freehold to HPCC to the promise of a grant of a lease with an option to buy back the freehold. After the initial proposed amendments put forward by Mr Cottle were criticised by Ms Holland QC for failing to identify the party to whom the lease with an option would be granted, further proposed amendments were put forward and it is these that I will focus on.

208. The following are the material amendments sought to be made (with the proposed amendments underlined and the proposed deletions from the original struck through):

(a) Subparagraph 2.1(f):

"Circa 1980, Brent explained to HPCC, being an Unincorporated Association that they were unable to hold the Assets. It was therefore agreed in order to safeguard the project that Brent would hold the monies and the assets on behalf HPCC [sic], provide a mentor for HPCC, to enable them to create an entity fit for purpose, at which point they would <u>grant to a community co-operative to be established by HPCC a lease with an option to purchase the freehold</u> ~~transfer the full interest to HPCC~~."

(b) In subparagraph 2.1(h):

"…<u>Brent paid considerably less than the said property was sold for</u> and for convenience it was transferred in the sole name of [Brent] largely because at the date and time of the purchase of the said Land…HPCC was an Unincorporated Association which in law was not an entity that was able to hold the Land in its sole name or jointly with [Brent]. The Land was therefore transferred into the sole name of [Brent] with the promise of <u>granting a lease with an option to buy out the freehold</u> and transferring it over to <u>a community co-operative to be established by</u> HPCC at some future date ~~after HPCC adopted themselves as a Company Limited by Guarantee~~ ... therefore Brent became "Custodian Trustees" for the Unincorporated Association known as

[5] This was an undefined term but is assumed to mean the Property.
[6] Again "Local Community" is not defined.

> HPCC and/or the People of the Local Brent Community and they now hold the said Land on Trust."

(There were further amendments to the sections of the pleading dealing with proprietary estoppel referred to below.)

209. The proposed amendments therefore seek to align the Defendants' case to the contemporaneous documentation and are a recognition that their original case of Brent promising or agreeing to transfer the freehold over to HPCC in time was unsustainable. In my view, however, the radical change to their case undermines the Defendants' evidence as to what was orally represented to them by Brent as to the interest HPCC would have in the Property. For the reasons set out below, I consider that the proposed Re-Re-Amended Defence does not disclose a reasonably arguable case for a constructive trust and I will therefore refuse permission to amend.

(d) The relevant entity

210. This is a fundamental point that is highlighted by the contortions the Defendants have had to go through in their proposed amendments. Recognising that HPCC itself could not be granted a lease and could not own the freehold (for the same reason that the Defendants say it was put into Brent's name), the Defendants propose to aver that the lease would be granted to a "*community co-operative to be established by HPCC*". Such a community co-operative was never established. I have already found that HPCC, and Mr Johnson on its behalf, do not have standing to register a restriction or to defend these proceedings. That conclusion is emphasised by the fact that Mr Johnson is now purporting to defend these proceedings by reference to a claim to a constructive trust for presumably the non-existent community co-operative. HPCC cannot claim a beneficial interest for itself; nor can it possibly claim such an interest on behalf of another entity that was never formed.

211. On the evidence there was never any question of HPCC itself managing the project post-acquisition; nor any suggestion that it would be granted a lease. It was always envisaged that a community co-operative would be set up to manage the project. Even the Steering Group Company was only considered to be a temporary measure before the community co-operative was established.

212. The December 1981 Report included a section on the proposed community co-operative, making it clear that it was this entity that would be managing the Site (underlining added):

> "3.4 THE FUNCTION OF THE COMMUNITY CO-OPERATIVE (CC)
>
> The CC would have control over the running of the Bus Depot Project. It is proposed that Brent Council purchases the Bus Depot with assistance from other agencies and then leases the Depot to the CC. At the beginning of the Project the CC would require grant assistance with its rental payments to Brent Council but as the CC succeeded in generating income this assistance would be reduced. One of the CC's objectives would be eventually to purchase the freehold from Brent Council. The CC would seek grant and other forms of assistance from a wide range of bodies."

213. In the Report 15/82 dated 9 February 1982 the community co-operative was referred to (underlining in original):

> "3.2 The Community Co-operative's Constitution
>
> 3.2.1 The HPCC propose to establish a Community Co-operative which will be responsible (through a Management Committee) for the overall management of the Project (see page 10 of the Project Report). It is not being proposed that the HPCC in its current form would manage the Project."

214. However, immediately after the acquisition, there were apparent delays in setting up the community co-operative and it was necessary for the Steering Group Company to be set up to manage Bridge Park for what was anticipated to be a period of some 18 months (see Report 57/82 in para. [90] above). The Steering Group Company had a similar membership to the Steering Group, with HPCC forming a majority but also including representatives of Brent and other local community organisations. At the time the Steering Group Company was incorporated, Brent was proposing to grant it an 18 months or 2 year lease, which would pave the way for a long lease then being granted to the new community co-operative. However, in the event, no such lease was ever granted to the Steering Group Company and it was instead granted a licence (see Report 14/84 in para. [93] above).

215. The reason why Brent was keen for a community co-operative, rather than HPCC, to be running Bridge Park was because it wanted it to be a body that was truly representative of the local community. In Report 24/88 to the PRC it was noted that the Steering Group Company:

> "…which has been responsible for the development of the project was always seen as an interim group which would dissolve and the Company be put into liquidation or modified once the complex was completed and be replaced by a new body to ensure full community accountability but without underminding [sic] the role of HPCC as the key motivating force of the project."

Mr Gutch in his evidence accepted that Brent wanted there to be wider community representation and "*eventually to have a body that embraces them all*".

216. In the circumstances, I do not see how the Defendants can maintain that the alleged promise of a lease to be granted to a community co-operative that may or may not be established at some point in the future can constitute a sufficient "arrangement or understanding" that the Property would perhaps in the meantime be held on trust for HPCC, or Mr Johnson on behalf of HPCC.

(e) Vagueness

217. Even though Mr Cottle submitted that the "arrangement or understanding" did not have to be as certain as would be necessary for an enforceable contract (relying on Chadwick LJ's second proposition in *Banner Homes*), nevertheless I think he would accept that their case, whether in its original form or with the proposed amendments, is very vague. No terms of the allegedly promised lease or option to some future contemplated entity have been pleaded and it is clear that none were agreed both pre- and post-acquisition. Such a basis for a claim to a *Pallant v Morgan* equity is in my view quite hopeless.

218. There is nothing in the contemporaneous documentation that shows that, pre-acquisition, Brent made any sort of commitment to grant a lease with an option to purchase the freehold. On the contrary, that documentation shows that the possibility of the proposed community co-operative buying the freehold was, at best, an aspiration of HPCC. Even Mr Johnson used the word "*aspiration*" in his witness statement when he said: "…*the longer-term aspiration was that a community co-operative should be formed to hold the property*…". The December 1981 Report said this: "*The long term aim of the project is that it should become self-financing and that the Community Co-operative should buy the Bus Depot back from Brent Council."*

219. If Mr Johnson and HPCC truly believed that they had an actual beneficial interest in the Property or that they were entitled to a lease with an option to purchase the freehold, then this would have been mentioned at some point over the years and in particular at the time when there were negotiations for a lease to the community co-operative or during the course of the possession proceedings.

220. The issue of an option to acquire the freehold only first appears in the documentation in relation to the negotiations for a lease to the still proposed community co-operative in 1986. The letter dated 26 November 1986 from Brent's Director of Law and Administration to the Steering Group Company's lawyer (see paras [96 to 97] above) stated that Brent had no objection "*in principle*" to there being included an option to acquire the freehold. That letter was clearly stated to be "*subject to lease*" and "*subject to appropriate Committee approval*" and so falls under the problem identified by Lewison LJ in *Generator Developments* (supra) of such words making it clear that the parties could not have intended any sort of beneficial interest to have arisen. Furthermore where a party does not expect to acquire an interest other than by way of a legally enforceable contract, this precludes the imposition of a trust (see the quote from Arden LJ's judgment in *Herbert v Doyle* in para. [200] above). This is of course normally related to pre-acquisition negotiations but in my view it is material to the position pre-acquisition that even 5 years later there was no more clarity on the terms of any pre-acquisition "arrangement or understanding".

221. In any event the negotiations for a lease did not progress for whatever reason and it appears that the Steering Group Company actually "*dropped their request to purchase the freehold for the time being*" (see the 24/88 Report to the PRC – para. [99] above). The Defendants' proposed amendments in relation to an option to purchase the freehold seem to be wholly derived from this correspondence in 1986 and 1987 as the suggestion of an option was not apparently discussed at any time before then. The Defendants have retrospectively adjusted their case and evidence by reference to these documents to assert that such an option was discussed prior to the acquisition. I am afraid that this has no credibility and I rely on the contemporaneous documentation as showing that a "*request*" for an option to be granted to the yet-to-be formed community co-operative was only first raised in 1986 and was not part of any discussions before the acquisition.

(f) Unjust enrichment

222. The Defendants appear to rely on a claim in respect of unjust enrichment. In the Re-Amended Defence it is pleaded within the section headed "*Promissory or Proprietary Estoppel*" whereas in the skeleton argument it appears to be a self-standing claim. It is convenient to deal with it here because it is essentially based on the same arguments as

are said to found an implied trust, whether resulting or constructive. In paragraph 2.1(j) of the Re-Amended Defence, the Defendants claim:

> "Alternatively, given that the Property was purchased with Funds not belonging to [Brent] for the sum of [£1,800,000] which now has a current market value upwards it would be unconscionable to allow [Brent] to claim any part of the equity in the said Land and Premises; this would amount to unjust enrichment."

223. The well-known four elements to a claim for unjust enrichment do not need to be set out (see *Menelaou v Bank of Cyprus UK Ltd* [2016] AC 176, at para [18]). Having rejected the Defendants' claims to the existence of any implied trust of the Property for the benefit of HPCC, any so-called enrichment by Brent cannot possibly have been at the expense of HPCC. In other words, the Defendants have not suffered any relevant loss and Brent has not been unjustly enriched. I might add that it is wholly unclear to me how such a claim could have assisted the Defendants, if it does not result in them having a beneficial interest in the Property. A claim in respect of unjust enrichment normally results in a personal restitutionary remedy and it would be surprising if the Defendants might be entitled to a proprietary remedy when such has been rejected on conventional grounds.

(g) Conclusion on constructive trust

224. In my judgment, the only possible claim that the Defendants might have to a constructive trust would be on the basis of a *Pallant v Morgan* equity, this being, if anything, akin to a commercial joint venture. A domestic style common intention constructive trust cannot be applied to this situation which in any event is unsupported by any credible evidence of there being any such common intention.

225. As to a *Pallant v Morgan* equity, the Defendants do not satisfy the first requirement of there being a pre-acquisition "arrangement or understanding" on the basis of which Brent was to proceed with the acquisition. And that is so on their original pleadings as well as on their proposed amended case. Even if they were to establish such an "arrangement or understanding" it suffers from the fatal flaws that HPCC has no standing to claim such an interest and that it is so vague as to be unenforceable even on the more relaxed basis upon which a *Pallant v Morgan* equity can be founded.

226. While recognising HPCC's incredible commitment and skill in successfully making the acquisition happen, I consider that Brent delivered on its part of the bargain to allow the Steering Group Company to manage Bridge Park, including retaining the income received from it to cover costs and reinvest. I do not think that Brent or the Defendants' witnesses truly believed that HPCC or any other entity had or were promised an interest in the Property; they all shared an aspiration that, at some stage, a community co-operative might be in a position to buy the freehold from Brent. But until that stage was reached, there was no promise, arrangement, understanding or assumption that HPCC had any sort of beneficial interest in the Property.

227. Accordingly, I reject the Defendants' claim to a constructive trust.

I. THE PROPRIETARY ESTOPPEL ISSUE

(a) Legal principles in relation to proprietary estoppel

228. There was no real controversy between the parties as to the law on proprietary estoppel, even though appellate judges have been reluctant to lay down a comprehensive definition of this flexible equitable doctrine. With the usual caveats, such a definition was attempted by the learned authors of *Megarry & Wade's The Law of Real Property,* 9th edn, as to when the equity is said to arise (see para. 15-001):

> "An equity arises where:
>
> (a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that C has or will enjoy some right or benefit over O's property, provided that inducement etc is not specifically limited to a mere personal use of the land;
>
> (b) in reliance upon this belief, C acts to his or her detriment to the reasonably determined knowledge of O; and
>
> (c) O then seeks to take unconscionable advantage of C by denying C the right or benefit which C expected to receive."

229. There is a useful summary of the current state of the authorities in Lewison LJ's judgment in *Davies v Davies* [2016] EWCA Civ 463 at para [38] (which was also set out in full in the very recent judgment of Floyd LJ in *Guest v Guest* [2020] EWCA Civ 387 at para [47]):

> "38. Inevitably any case based on proprietary estoppel is fact sensitive; but before I come to a discussion of the facts, let me set out a few legal propositions:
>
> i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: *Thorner v Major* [2009] 1 WLR 776 at [57] and [101].
> ii) The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: *Thorner v Major* at [29].
> iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a "mutual understanding" may depend on how the other elements are formulated and understood: *Gillett v Holt* [2001] Ch 210 at 225; *Henry v Henry* [2010] 1 All ER 988 at [37].
> iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial.

> The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: *Gillett v Holt* at 232; *Henry v Henry* at [38].
> v) There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: *Gillett v Holt* at 232.
> vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: *Jennings v Rice* [2003] 1 P & CR 8 at [56].
> vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance: *Henry v Henry* at [51] and [53].
> viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: *Jennings v Rice* at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: *Jennings v Rice* at [50] and [51].
> ix) In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: *Jennings v Rice* at [51]. However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a "portable palm tree": *Taylor v Dickens* [1998] 1 FLR 806 (a decision criticised for other reasons in *Gillett v Holt*)."

230. In relation to how clear the representation or assurance from the landowner has to be, Mr Cottle relied on a passage from Lord Walker's speech in *Thorner v Major* [2009] 1 WLR 776, paras [54] to [56] to submit that an equity could still arise even if there is some uncertainty over the actual representation that is relied upon. However, it is important to look at what Lord Walker actually said (and this was picked up in the Privy Council decision of *Mohammed v Gomez* [2019] UKPC 46, at paras. [25] and [26]):

> "54. There is some authority for the view that the "clear and unequivocal" test does not apply to proprietary estoppel. That view was expressed by Slade LJ in *Jones v Watkins* (26 November 1987, unreported). The same view has been expressed in at least the past three editions of Treitel, Law of Contract. The current (12th) edition (2007) by Mr Edwin Peel, in a passage comparing promissory and proprietary estoppel, states (para 3-144):
>
> > "Promissory estoppel arises only out of a representation or promise that is 'clear' or 'precise and unambiguous'. Proprietary estoppel, on the other hand, can arise where there is no actual promise: eg where one party makes

> improvements to another's land under a mistake and the other either knows of the mistake or seeks to take unconscionable advantage of it."
>
> 55. The present appeal is not of course a case of acquiescence (or standing-by). David does not assert that he can rely on money which he has spent on the farm, or improvements which he has made to it. His case is based on Peter's assurances to him. But if all proprietary estoppel cases (including cases of acquiescence or standing-by) are to be analysed in terms of assurance, reliance and detriment, then the landowner's conduct in standing by in silence serves as the element of assurance. As Lord Eldon LC said over 200 years ago in *Dann v Spurrier* (1802) 7 Ves 231, 235-236:
>
> > "this Court will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on is in many cases as strong as using terms of encouragement."
> >
> > 56. I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context…"

231. The degree of clarity required therefore depends on the context. But there must have been a representation, either by words or conduct that, to the knowledge of the representor, was reasonably relied upon by the representee to their detriment. The importance of clarity was emphasised by Lord Scott in *Cobbe v Yeoman's Row Management Ltd* (supra) at para [28]:

> "Proprietary estoppel requires, in my opinion, clarity as to what it is that the object of the estoppel is to be estopped from denying, or asserting, and clarity as to the interest in the property in question that the denial, or assertion, would otherwise defeat. If these requirements are not recognised, proprietary estoppel will lose contact with its roots and risk becoming unprincipled and therefore unpredictable, if it has not already become so…"

232. Further the quote in para [200] above from Arden LJ's judgment in *Herbert v Doyle* (supra) expressly concerned both proprietary estoppel and constructive trust and so it is equally applicable here. Where parties intentionally do not enter into any legally binding agreement, for example where negotiations are "*subject to contract*", one party cannot rely on the doctrine of proprietary estoppel to make their non-agreement effectively binding on the other.

(b) The alleged representations

233. As with the constructive trust allegations, the Defendants seek permission to amend the alleged representations that they rely on to found their proprietary estoppel claim. I set out below the original and proposed amended alleged representations (with the proposed amendments underlined and deletions struck through):

(a) Subparagraph 2.1(i): "*The Defendant* [sic] *asserts that [Brent] repeatedly made promises to it from [1982] that the [Property] would eventually be transferred and be under the control of HPCC via the means of the community co-operative to be established by HPCC.*"

(b) Subparagraph 2.1(k): "*[Brent] … made representations to [Mr Johnson] that the premises would be held for the benefit of the community (as represented by [Mr Johnson])*."

(c) Subparagraph 2.1(k)(ii): "*There was an expectation that the ~~beneficial~~ [Brent's] interest in the Property would be held on trust for them, the Property being put in [Brent's] name only until ~~legal~~ a leasehold title with an option to buy the freehold was transferred to the community organisation that both parties then envisaged would be created*."

(d) Subparagraph 2.1(k)(iii): *"[Brent's] stance was that acquisition of the Stonebridge Bus Garage was seen from the outset for [sic] the benefit of the community*".

(e) Subparagraph 2.1(l)(iv): "*From as far back as 1981 when [Mr Johnson] and HPCC started making enquiries to purchase the disused Stonebridge Bus Garage, [Mr Johnson] and HPCC were promised that they will eventually take over the control of the [Property]*."

(f) Subparagraph 2.1(l)(vi): "*Throughout the entire period for raising funds for the Project, [Mr Johnson] and the Steering Group made it clear that they as an organisation wanted the option to buy the freehold for the Land and not just a Lease and were assured that they would get it*."

(g) Subparagraph 2.1(l)(vii): "…*Merle Amory, who later became leader of the Council, told [Mr Johnson] and members of the Steering Group that it was her understanding that [Brent] intended to give HPCC (through a community co-operative to be established) the option to buy the freehold*."

(h) Subparagraph 2.1(l)(xi): *"[Brent's] chief executive, Mr Mike Bichard, explained to [Mr Johnson] and the HPCC Steering Group that their requirements were unique and it would take some to [sic] time, but gave them the assurance that they would get a lease with the option to buy the freehold once HPCC had established a community co-operative*."

(i) Subparagraph 2.1(l)(xiii): "*As Chairman, after they had been in management control of the Bridge Park for quite a number of years, [Mr Johnson] refused to accept a very limited Lease that was offered ~~to them~~ because they were promised the option of buying the Freehold, with an arrangement that would ~~lead to~~ allow HPCC (via a community co-operative to be established) to acquire the Freehold that being their agreed objective. So [Mr Johnson] and HPCC refused to accept anything less for the community as sufficient time had elapsed ~~and [Mr Johnson] felt they had met the requirements that they incorporate an entity able to manage and run the project.~~ [Mr Johnson] therefore refused to sign and accept the limited Lease that was again being offered.*"

(j) Subparagraph 2.1(l)(xv): *"[Mr Johnson] and HPCC were made promises on a number of occasions throughout the prior, during and after the purchase of the Bus Depot. [Mr Johnson] is very clear these promises led him and ~~the~~ HPCC ~~Steering Group~~ to believe that they will eventually be transferred the control and have the option to buy back the freehold to the Land following the establishment of a community co-operative*."

234. The whole tenor of the original Re-Amended Defence was of representations made by, amongst others, Lord Bichard and Ms Abbott to Mr Johnson that Brent's freehold title would in time be transferred to HPCC or a "*community organisation*" under the control of HPCC. Now the Defendants assert that there were no representations in those terms and instead, Lord Bichard et al, represented to Mr Johnson that a "*community co-operative*" would get a lease with an option to buy the freehold. They even go so far as to say that "*throughout the entire period*", Mr Johnson only ever wanted an option to buy the freehold, which is entirely inconsistent with what he had alleged in the original case.

235. The proposed amendments suffer from the same flaws identified above in relation to the constructive trust claims, in particular the failure to identify an entity to which the alleged equity could attach and the general vagueness as to the content of the alleged representations. Neither HPCC, nor the Steering Group Company nor the proposed community co-operative (that was never established) can claim to be the beneficiary of any equity arising as a result of the alleged representations. And those alleged representations have no credibility as they have so markedly changed and there is simply no evidential support for them, save for Mr Johnson's evidence, which I reject. As with the constructive trust case, there was merely an aspiration, shared by both sides, that in time a community co-operative would own the Property but that might only happen in certain circumstances which never materialised. Furthermore, the fact that it was only after these proceedings commenced, 35 years after the acquisition, that the Defendants alleged that such representations were made undermines their evidence in such respect.

236. There is a further general point that can be made about the alleged representations. As can be seen particularly from (b) and (d) above, the Defendants appear to rely on representations to the effect that Brent would be holding the Property on trust for or for the benefit of "*the community*". The Defendants claim to be "*the community*" but that does not fit with the facts.

237. First, Brent, as with any local authority, is the body charged with acting in the interests of the local community, so any property acquired by it would necessarily be held for the benefit of the community.

238. Second, there is no evidence that shows that HPCC or the Defendants either now or at the material time are synonymous with the "*community*". Clearly they were representative of the local black community and their efforts ensured that Brent did not suffer the same fate as Brixton in 1981. They were also instrumental in securing the acquisition and getting the project off the ground. But even at the time, HPCC was not regarded as representative of the whole diverse local community. This is shown by the composition of the Steering Group and the board of the Steering Group Company but perhaps more significantly by the shared intention to set up a new community co-operative that would manage and maybe eventually buy the Property but whose purpose

was to allow for wider community representation than could be provided by HPCC. Indeed, when asked what was meant by references to the "*community*" the Defendants' further particulars explained as follows:

> "The community is the black African and Caribbean community in Stonebridge, Harlesden, St Raphael's and surrounding areas…The allegation is that the Property would be held on behalf of [HPCC], an unincorporated association representing the interests of the community."

239. Therefore, any representation by Brent as to the Property being held for the benefit of the community cannot translate into a representation that it would be held on trust for HPCC or any other existing organisation. The Defendants' assertion that they are "*the community*" seems to me to be misplaced and confuses what they did for the community with who they truly represent. It is only Brent that can properly be said to represent the whole community.

(c) The alleged detriment

240. Apart from a general plea of detriment suffered by HPCC, the Re-Amended Defence does not clearly set out any relevant detriment. The closest the Defendants get to such an allegation is the following:

(a) Subparagraph 2.1(k): *"…[Mr Johnson] and HPCC in reliance upon those representations having secured or facilitated the securing of funding toward the acquisition and development of the premises such that it would be unconscionable for [Brent] to now resile from the representations made*."

(b) Subparagraph 2.1(k)(v): *"[Mr Johnson] and those involved in running HPCC at the time acted on this expectation by devoting themselves to making the project happen being instrumental in obtaining the necessary funding for acquisition and redevelopment and by arranging and involving themselves in the planning and carrying out of extensive works subsequently required to convert the bus depot into the thriving community project that it became.*"

241. These pleas fall into the trap identified above of conflating ownership of the project with ownership of the Property. HPCC was not even given ownership of the project; instead that was given to the Steering Group Company in the expectation that it would eventually be managed by the new community co-operative. In cross-examination, Mr Johnson said on a number of occasions, when it was put to him that he knew that Brent owned the Property, that he disagreed with that because HPCC were not "*just employees*" of Brent. There has never been any suggestion that HPCC were "*employees*" of Brent and working for Brent on the project. Brent had handed over management of the project to the Steering Group Company but it clearly had not handed over ownership of the Property, as can be seen by the ongoing negotiations for a lease. So whatever involvement HPCC had in managing the project, that was nothing to do with ownership of the Property and cannot, it seems to me, amount to any sort of detrimental reliance.

242. In any event, the alleged detrimental reliance was suffered by HPCC, insofar as an unincorporated association is capable of suffering, but the alleged representations were made in favour of the proposed community co-operative, a distinct body. As proprietary

estoppel can only be claimed by a person who relied on a representation to their detriment, it must be the same person suffering the detriment in order to provide the necessary causal link between the representation and the detriment.

243. Even if the claim is effectively brought on behalf of the proposed community co-operative, the alleged representations as to the grant of a future interest in which the terms are yet to be agreed and would necessarily be the subject of detailed negotiation, cannot found a proprietary estoppel claim. This is because a mere hope that a future interest would be granted is insufficiently certain but also because of the principle that also applied to the constructive trust claim, that expectations arising in the course of negotiating an actual interest in land that would be effected by a legally enforceable agreement cannot effectively be granted in advance of such an agreement by proprietary estoppel (see para [232] above).

(d) Conclusion on Proprietary Estoppel

244. In my judgment, the Defendants have adduced no credible evidence as to the alleged representations made by Brent and/or their (or any other party's) detrimental reliance. On the contrary I find that no such representations were made by or on behalf of Brent in the terms alleged. Nor do I consider that their claim is sustainable as a matter of law. As these are the necessary foundations for a claim to proprietary estoppel, it is unnecessary for me to go on to deal with the alleged unconscionability of Brent's actions but for the record I find that Brent's actions have not been unconscionable in respect of its acquisition of the Property, its denials of any beneficial interest held by the Defendants and of its current proposals for the Property.

245. Accordingly, I reject the Defendants' proprietary estoppel claims.

J. THE ALTERNATIVE ESTOPPELS ISSUE

246. The Defendants also rely on the doctrines of promissory estoppel and estoppel by convention. These depend on essentially the same facts as are said to found the implied trusts and proprietary estoppel claims. It would be most strange if those doctrines clearly did not apply to these facts in order to give the Defendants a beneficial interest in the Property but these alternative estoppels did.

247. As a result, I can be quite short with these. In contrast with proprietary estoppel, promissory estoppel and estoppel by convention do not themselves found a cause of action or enable a party to assert a right. Rather they prevent a party from acting inconsistently with or denying a representation or promise made by that party or an assumed state of facts or law. As it is colloquially said, these estoppels cannot be used as a sword, only as a shield – see eg *Mears Ltd v Shoreline Housing Partnership Ltd* [2015] EWHC 1396 (TCC), para 51(e). The Defendants, even though they are defendants, are effectively saying that these forms of estoppel give them the right to assert a beneficial interest in the Property. I think that is misconceived as a matter of law. (It also suffers the same fundamental flaw as the other claims in relation to the identity of the party able to claim the benefit of such an estoppel.)

248. As to promissory estoppel, this is necessarily based on there being an existing legal relationship between the parties – see *Thorner v Major* (supra) at para [61]. In this case there was no such relationship between Brent and HPCC; and none was pleaded by the Defendants. As there was no such relationship there were no legal rights between the parties that Brent could have promised or assured HPCC that it would not enforce. Accordingly, promissory estoppel is not a claim available to the Defendants and, in any event, it could not achieve what the Defendants want, namely a beneficial interest in the Property.

249. As to estoppel by convention, again this normally applies to parties to a transaction where there is an assumption shared by them either as to the facts or the law. The parties are precluded from denying the truth of that assumption if it would be unconscionable or unjust to allow them, or one of them, to go back on it – see generally *Republic of India v India Steamship Co* [1998] AC 878. The assumed facts or law must be stated precisely for the estoppel to be established. The pleaded assumptions relied upon by the Defendants, insofar as they are discernible, basically replicate the alleged representations underlying the constructive trust and proprietary estoppel claims. They were clearly insufficient for a number of reasons to succeed on those claims and that applies to these estoppels too. There was no shared assumption on which the parties proceeded in relation to the beneficial interests in the Property (save possibly that Brent would be the sole legal and beneficial owner); nor was there any relevant detrimental reliance by HPCC or anyone else; nor did Brent act unconscionably in such respect.

250. Accordingly, I reject the promissory estoppel and estoppel by convention claims.

K. THE CHARITABLE TRUST ISSUE

(a) Introduction

251. Having rejected all the private trust claims, I finally come to the charitable trust claim. In his closing submissions, Mr Cottle concentrated principally on this and said that it was now the Defendants' main claim, perhaps because of an appreciation as to the weakness of the private trust claims.

252. The Defendants' case on this is not entirely clear from their Re-Amended Defence. It relies on much the same facts as were the basis for all the private trust arguments but it involves the allegation that HPCC was effectively a "Charitable Trust" as it was created for purely charitable purposes. In paragraph 8 of the Re-Amended Defence the following averments are made:

> "8.1 Alternatively it is the Defendants [sic] case that [Brent] holds the said Land as trustees because it is the asset of the Charitable Trust (HPCC). The Defendants maintains [sic] that the said Land must be an asset of a Charitable Trust because the funds were granted to HPCC.
>
> 8.2 …The purposes for which HPCC was created was exclusively Charitable; however the fact that [Brent] worked hand in hand with this newly created

> body HPCC does not in any way undermine the body's status as being created for charitable purposes.
>
> …
>
> 8.7 …At all material times, HPCC was considered as being completely independent of [Brent]. It must therefore follow that the funding which was received by [Brent] must belong to the local community and [Brent] held those funds as Custodian Trustees. As a consequence, the Land that the funds were used to purchase is an asset belonging to the charitable body and the beneficiaries are any specific targeted groups mentioned and in general all people of the Local Community."

253. Even though the terms: "*Charitable Trust*"; "*Custodian Trustees*"; and "*Local Community*"; have capitalised first letters, I do not believe they are defined terms within the pleading. Paragraphs 8.1 and 8.2 of the Re-Amended Defence rely on HPCC itself being some sort of charitable entity and as the grant monies were allegedly owned by HPCC as such and, I assume, that the Property is held on resulting trust for it as a result, it is an asset of the "*Charitable Trust*" that is HPCC. Quite apart from the fact that I have rejected the resulting trust claim, this allegation is clearly not substantiated on the facts as there is no evidence that HPCC was set up as a charitable trust or that it is any sort of charitable entity.

254. An alternative case seems to be being put in paragraph 8.7 of the Re-Amended Defence. Again it relies on the ownership of the grant monies not being Brent's but this time being that of the "*Local Community*", however so defined. It is unclear what the reference to the "*charitable body*" is but the allegation can be interpreted as being that the grant monies were to be used for a charitable purpose; therefore the Property is held by Brent for charitable purposes and on a charitable trust.

255. There is, it seems to me, a fundamental confusion running through the Defendants' case on charitable trust. They seek to show that the Property had to be used for activities that can only be characterised as charitable; therefore, they say, the Property must be held by the legal owner on charitable trusts. The confusion is over "charitable purposes" and whether a "charitable trust" exists and, in my view, the former does not necessarily lead to the latter.

256. In his closing submissions, Mr Cottle said that the acquisition was for charitable purposes and for purposes beneficial to the community. Those charitable purposes were, he said, encapsulated in the covenant in the Deed between Brent and the GLC that the Property would only be used for the purposes of the "*Community Project*".

257. Based on a review of a number of the authorities that were cited to me, Deputy Master Rhys concluded on the strike out application that the charitable trust arguments were "*tenable as a matter of law*". In the appeal on the standing point in relation to the Charitable Trust Issue, Birss J did not have to consider whether the legal arguments were tenable or not. Instead this was left to the Attorney General to decide and, if the Attorney General had decided that there was no charitable trust in this case, the Defendants would not have had standing to argue for it. That is how I understand Birss J's judgment to work. However, the Attorney General did not decide that and has opted to remain neutral on the question, thereby allowing the Defendants to argue the matter.

(b) The relevant law on charitable purposes

258. I do not think it was disputed that the purposes for which the Property was acquired could be said to be charitable. At the time of its acquisition, the applicable definition of "*charity*" was generally considered to be the four categories identified by Lord Macnaghten in *The Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531, 583, (following from the non-exhaustive list in the preamble to the Statute of Elizabeth Charitable Uses Act 1601):

> ""Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly."

259. Even though there was an educational aspect to the project, clearly the most likely category is the fourth being a trust for other purposes beneficial to the community. Because of the House of Lords' decision in *Inland Revenue Commissioners v Baddeley* [1955] AC 572, which cast doubt on whether trusts for recreational or other leisure time activities were charitable, Parliament enacted the Recreational Charities Act 1958, which Mr Cottle strongly relied upon. The preamble to that Act stated that it was "*An Act to declare charitable under the Law of England and Wales the provision in the interests of social welfare of facilities for recreation or other leisure-time occupation* …" Section 1 of the Act provided as follows:

> "1. (1) Subject to the provisions of this Act, it shall be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:
>
> Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for public benefit.
>
> (2) The requirement of the foregoing subsection that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless -
>
> (a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and
>
> (b) either –
>
> (i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances;
>
> (ii) the facilities are to be available to the members or female members of the public at large.

(3) Subject to the said requirement, subsection (1) of this section applies in particular to the provision of facilities at village halls, community centres and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation and leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity."

260. Mr Cottle emphasised the word "*shall*" in subsection (1). I would point out however that the proviso to subsection (1) shows that this is not defining what is a charitable trust. What this Act was doing was making clear that trusts set up for the purposes specified would be deemed to be charitable as long as they satisfied the public benefit requirement.

261. Lord Macnaghten's four categories of charity have since been superseded, first by the Charities Act 2006 and then by the Charities Act 2011. Section 5 of the Charities Act 2011 effectively re-enacts s.1 of the Recreational Charities Act 1958 in the following form:

"(1) It is charitable (and is to be treated as always having been charitable) to provide, or assist in the provision of, facilities for—

(a) recreation, or

(b) other leisure-time occupation,

if the facilities are provided in the interests of social welfare.

(2) The requirement that the facilities are provided in the interests of social welfare cannot be satisfied if the basic conditions are not met.

(3) The basic conditions are—

(a) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended, and

(b) that—

(i) those persons have need of the facilities because of their youth, age, infirmity or disability, poverty, or social and economic circumstances, or

(ii) the facilities are to be available to members of the public at large or to male, or to female, members of the public at large.

(4) Subsection (1) applies in particular to—

(a) the provision of facilities at village halls, community centres and women's institutes, and

(b) the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation,

and extends to the provision of facilities for those purposes by the organising of any activity.

But this is subject to the requirement that the facilities are provided in the interests of social welfare.

(5) Nothing in this section is to be treated as derogating from the public benefit requirement."

262. Again this is concerned purely with whether the provision of such facilities is charitable or not. Sections 2 to 4 of the Charities Act 2011 contain a comprehensive definition of "*charitable purpose*". And section 1 contains a definition of "*charity*" as follows:

"(1) For the purposes of the law of England and Wales, "charity" means an institution which—

(a) is established for charitable purposes only, and

(b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities."

An "*institution*" is defined in section 9(3) as: "*an institution whether incorporated or not, and includes a trust or undertaking*." It is therefore a separate question as to whether a trust or other "*institution*" has been properly set up.

263. Mr Cottle also relied on the restrictions on dealings with land by charities set out in Part 7 of the Charities Act 2011. However, those sections he referred to, ss.117, 119, 121 and 122, only go to emphasise the point that they apply to land "*held by or in trust for a charity*" (see ss.117 and 121). If Mr Cottle was right that the Acts set out above deem the provision of those facilities to be always a charitable trust, then all of a local authority's leisure and community centres would be likely caught and be subject to the restrictions that go along with charitable trusts. Mr Cottle submitted that this did not necessarily follow and relied on the particular circumstances of this case but, in my view, it is difficult to escape this conclusion if he is right as to the effect of those sections of the Act.

(c) <u>The relevant law on charitable trusts</u>

264. So rather than whether the Property was being held for charitable purposes, the more relevant question seems to me to be whether the Property is held on trust. If it is, then it would be deemed a charitable trust, by virtue of s.1 of the Recreational Charities Act 1958 or s.5 of the Charities Act 2011.

265. There are a number of cases involving local authorities where the question was whether the particular land was held for their statutory purposes or on charitable trust. Ms Holland QC again relied heavily on the wording of the 1982 Transfer that referred only to s.120 of the Local Government Act 1972 and did not use the word "*trust*" or "*charity*". She submitted that there is nothing in any of the surrounding documentation that suggests any intention to create a charitable trust over the Property in perpetuity.

266. Mr Cottle submitted that it is consistent with section 120 of the Local Government Act 1972 for a local authority to facilitate the acquisition of land for charitable purposes. He said that the "*label put on the transfer*" does not alter the charitable purpose and HPCC's charitable purpose was not extinguished by the Property being put into Brent's name.

267. Both Ms Holland QC and Mr Cottle referred me to *In Re Spence* [1938] 1 Ch 96 in which Luxmoore J upheld a gift made by will to use the proceeds of sale of the testator's residuary estate "*to purchase a suitable site of land at Stockton-on-Tees and in or towards the erection on such site of a public hall which site and hall when completed shall be presented by the bank to the corporation of Stockton-on-Tees…to be used by the said corporation for such public purposes as it may from time to time consider desirable.*" The issue to be determined was whether the gift was charitable; if it was, then the gift was valid; if it was not, then the gift would pass as on an intestacy. There was no question that the testator intended to create a trust. The only question was whether it was a valid charitable purpose expressed in the will and, because the hall could not be used for private purposes, Luxmoore J held that it was charitable. The important point about the case is however that it was not a gift to Stockton-on-Tees Corporation but to the trustees appointed by the will. On p.101, Luxmoore J said as follows (underlining added):

> "There are many cases in the books dealing with this class of gift. It is, I think, impossible to classify them or deduce any fixed principle from them. It is sufficient to say that the mere fact that the object of the gift may be beneficial to the community does not of itself make the gift charitable. Before referring to any of the authorities cited in argument, it is convenient to consider the precise language of the will and to determine its scope and nature. It is a gift of the proceeds of sale of the testator's residuary estate to the trustee, who is directed to apply it first in the purchase of a site at Stockton-on-Tees and then in or towards the erection on that site of a public hall. The site and hall when completed are to be presented by the trustee to the corporation of Stockton-on-Tees. <u>Pausing here it seems fairly plain that the site and public hall are to become part of the property of the corporation of Stockton-on-Tees and accordingly are to be held, like its other corporate property, for the benefit of the borough</u>…"

268. The underlined last sentence seems to me to be highly significant. Luxmoore J was only considering whether the initial gift to the trustees was charitable or not. He was clear that once the site was handed over to Stockton-on-Tees Corporation, it would <u>not</u> be subject to any charitable trust and it would be held, like other property, pursuant to its statutory purposes and for the benefit of the borough.

269. The same conclusion was reached in the two cases most relied upon by Ms Holland QC: *Richmond-upon-Thames LBC v Attorney-General* (1982) 81 LGR 156, a decision of Warner J (the ***Richmond* case**); and *Liverpool City Council v Attorney-General,* unreported, 15 May 1992, a decision of Morritt J (as he then was) (the ***Liverpool* case**).

270. The *Richmond* case concerned a gift made in 1888 by Sir John Whitaker Ellis, the then Member of Parliament for Richmond, of land and buildings to the vestry of the Parish of Richmond. The question for the court was whether the gift to the vestry was subject to a valid charitable trust or whether the vestry held it pursuant to its statutory purposes,

those being principally as an urban sanitary authority under the Public Health Act 1875. The vestry had covenanted to use the land only for the following purposes:

> "…the erection and maintenance thereon of municipal offices rooms and public buildings for the use of the vestry and their officers and the inhabitants of the said parish the laying out and maintenance thereon of a public recreation ground garden and walks and the construction and maintenance thereon of the road to lead from Hill Street in the said parish to the River Thames as shown upon the said estate map…"

271. Warner J decided that the land was not held on a charitable trust and that it was instead held for the vestry's statutory purposes. (Richmond-upon-Thames LBC had succeeded to the vestry's title and obligations and in 1980 had wanted to develop the site while maintaining the Town Hall that had been built on it.) Warner J referred to the dichotomy in these situations:

> "Be that as it may, it is in my opinion clear that modern statutes about local government, and I include in them the Public Health Act 1875, have established a dichotomy between property held by a local authority for their statutory purposes as such and property held by such an authority on charitable trusts. That the latter category or property still subsists is evinced by, for instance, section 131(3) of the Local Government Act 1972. But in the case of the former category of property, most of which is in the very nature of local government held for purposes capable of being in law charitable purposes, the statutes have provided a set of rules distinct and independent from those applicable under the law relating to charities, and have, in particular, by necessary implication, excluded such property from the jurisdiction of this court over charities and from the jurisdiction of the Charity Commissioners."

272. Warner J then went on to consider the various relevant factors including that in nearly every material document the vestry had been referred to in its statutory capacity and there was no mention of "*trust*" or "*charity*". Neither factor was decisive. He said this:

> "I have come to the conclusion that what Sir John Whittaker Ellis and the vestry did had the effect of causing the vestry to take the land for the purposes mentioned in the deed of covenant as being among the vestry's statutory purposes as an urban sanitary authority and that it did not have the effect of causing the vestry to take the land on charitable trusts. The facts that have seemed to me to lead, in the aggregate, to that conclusion are these. First and foremost there is the fact that in every material document except the letter of 30 May 1888 and the resolutions passed by the vestry on the following day – and no one suggests that they by themselves constituted definitive trusts – the vestry was referred to as being the urban sanitary authority for the parish of Richmond…That leads, almost inevitably, so it seems to me, to the inference that those references were to the capacity in which the vestry took the land. That that was so indeed spelt out in two of the material documents, namely, the certificate signed by the clerk to the vestry on 12 September 1888 and the minutes of the meeting held on 9 October 1888. In contrast, nowhere in any of the material documents are the words "trust" or "charity" used. I accept of course that, as was emphasised by Mr McCall, technical terms are not needed for the creation of a charitable trust. But I find it difficult to accept that the late 19th century lawyers who prepared documents here in question

> would have worded them as they did if their instructions had been to create a charitable trust rather than to vest the land in the vestry in its statutory capacity under the Act of 1875."

The latter point indicates that it is an important factor as to whether there was an actual intention to create a charitable trust, as there would need to be for the creation of any express trust. Warner J also referred to *In Re Spence* (supra), and concluded, as I did in para. [268] above, that Luxmoore J found that, once the site had been handed over to Stockton-on-Tees corporation, "*the charitable trust would be at an end*" and that it would thereafter be held by the corporation beneficially for its statutory purposes.

273. Mr Cottle submitted that the *Richmond* case is limited to its particular facts which was obviously a gift to the vestry for its statutory purposes (a town hall and a road to the Thames). These were far removed from the facts of this case in which the acquisition only took place because of HPCC and its charitable purpose. Mr Cottle submitted that the *Richmond* case does not exclude the possibility that the section 120 power could be used to acquire land for charitable purposes. Alternatively, he submitted that it was wrongly decided.

274. Even though it is a first instance decision and not technically binding on me, I do not consider there to be any grounds for saying the *Richmond* case was wrongly decided. While there are clear differences in the facts of the *Richmond* case and this case, there are also clear parallels and Warner J had to decide a very similar question to the one that is before me; namely whether the transfer and other material documents show that the Property was held by Brent for its statutory purposes or on charitable trust. Furthermore, the *Richmond* case was followed by Morritt J in the *Liverpool* case.

275. In the *Liverpool* case, Morritt J had to consider whether a transfer of land (Allerton Hall and grounds) to Liverpool City Council dated 30 March 1926 (registered on 19 May 1926) meant that it was held by Liverpool City Council "*on exclusively charitable trusts as the Attorney-General contends, or as part of its corporate property as the City Council claims.*" Liverpool City Council had covenanted with the donors to use the grounds as a public park or recreation ground and that if Allerton Hall were used as a "*public library, museum, or art gallery*" the family name of the donors, "Clark" should be used as part of the title. It was accepted that both such uses were charitable purposes. Morritt J also referred to this being common ground:

> "It is also common ground that to establish a charitable trust it is necessary to show an intention that the Corporation's legal ownership of the land is to be held beneficially for charitable purposes cf *Brisbane City Council v Attorney-General* [1979] AC 411, [1978] 3 All ER 30 at page 421G of the former report. Another way of posing the same test, namely whether there is an imperative dedication of the land to purposes which are charitable, was adopted by Mr Justice Warner in [the *Richmond* case]."

This confirms the point made above about there needing to be an intention to create a charitable trust or whether there was an "*imperative dedication*" of the land for such purpose.

276. Morritt J concluded as follows:

> "The question is whether on the facts of this case a trust or imperative dedication for charitable purposes is established. In my judgment it is not. First, each of the first three covenants in different ways envisages that the estate would otherwise be available to the Corporation to use for other statutory purposes. The reference in the first covenant to the possibility of using the Hall as a public library, museum or art gallery, envisages the exercise by the Corporation of some statutory power because the gift did not include either the money or the books, objects or pictures to enable such a use…
>
> Second, performance of the second and fifth covenants would involve the Corporation in some expenditure of rate payers money…
>
> Third the Attorney General's argument gives rise to an inescapable dilemma. If the draftsman thought that a system of personal covenants, coupled with the provisions of section 95 Public Health Amendment Act 1907 was inadequate to ensure the perpetual use and memorial desired by the donors, why did he nevertheless adopt that system? If he did not appreciate the legal defects in such a system, why should the court impose a charitable trust which the parties never considered at the time?
>
> Thus I do not think that the covenants entered into by the Corporation can be regarded as the acceptance of a fiduciary obligation rather than the acceptance of a legal obligation to the donors fettering the Corporation's powers to use the estate for other statutory purposes. Such a conclusion appears to me to be entirely consistent with the earlier correspondence which refers to a gift by the donors to the Corporation and the absence of any consideration of the formalities under either the Land Registration Rules or the Mortmain and Charitable Uses Act 1882, which would or might be applicable to a transfer on charitable trusts."

277. Mr Cottle again pointed to the very different facts of this case, in particular that there was no similar deeming provision as s.1 of the Recreational Charities Act 1958 and there was a far weaker charitable purpose than in this case. Nevertheless, in both the *Richmond* and *Liverpool* cases there was a straight choice between a charitable trust and beneficial ownership by the local authority and in both cases the experienced Chancery judges decided that there was inadequate evidence of an intention to create a trust or an imperative dedication to charitable purposes.

278. Morritt J referred to *Brisbane City Council and another v Attorney-General for Queensland* [1979] AC 411, a Privy Council decision on an appeal from the Full Court of the Supreme Court of Queensland. Mr Cottle also relied on this case insofar as it shows that there are no set words required to create a trust, including the use of the word "*trust"* not being necessary. However, and despite the law in Australia apparently being different to England and Wales at that time in relation to the definition of charity (see p.422D-E), I take from the case that the normal requirements for the creation of a trust apply just as much to charitable trusts. Lord Wilberforce delivered the judgment of the Board and at p.421F-G said:

> "The first question is whether the council acquired the land as trustees upon any trust. To create a trust no formal words are required once the intention is clear. The relevant intention, if a trust is to be held to be created, must be that the council's legal ownership of the land is to be held beneficially, in the case of a private trust,

> for ascertained persons, or in the case of a permanent public trust, for charitable purposes."

279. Mr Cottle also referred extensively in both his opening and closing submissions to *Dore and ors v Leicestershire County Council and ors* [2010] EWHC 1387 (Ch) a decision of Sales J (as he then was) (the ***Dore* case**). Mr Cottle pointed out that, in the *Dore* case, Sales J described the charitable trust as a constructive trust and held that a property could be held by a local authority partly on charitable trusts and partly pursuant to its statutory purposes.

280. The *Dore* case was brought on behalf of a charitable unincorporated association called Breedon-on-the-Hill Community Association (**BOTHCA**) in relation to land acquired by Leicestershire County Council (**LCC**) upon which was built premises in 1962 to house a local school and community centre. BOTHCA contributed the sum of £3,000 to the cost of constructing the premises, those funds having been contributed in the 1940s and 1950s by members of the local community. For many years, BOTHCA used the community centre for its purposes while the predominant user of the premises was the school. However from about 2004 onwards, relations between the school and BOTHCA deteriorated, and LCC was proposing both to charge BOTHCA for the use of the premises and to limit its use of the premises. BOTHCA started the proceedings on the basis that what LCC was proposing to do contravened BOTHCA's private rights and was contrary to public law. BOTHCA argued that it had a beneficial interest in the premises and that disabled LCC from taking those steps.

281. It was critical, in my view, that there was no issue between the parties that the premises were held in part (or whole) on charitable trust. At para [5], Sales J said:

> "5. LCC accepts that it received the £3,000 as monies impressed with a charitable trust, which charitable trust obligation has been carried through to affect LCC's ownership of the Premises; but it denies that this trust gives rise to any rights specifically for BOTHCA (as distinct from other members of the community or community groups generally in Breedon) or prevents it from charging BOTHCA and other community groups on a non-profit basis for use of the Premises (so as to cover the expense of making facilities at the Premises available for them, in terms of matters such as lighting, heating and caretaking costs arising from their use of those facilities) or from taking measures limiting BOTHCA's use of the Premises in the interests of what LCC and Governors regard as the effective and efficient operation of the School, in the interests of the children who attend the School."

As it was conceded that the premises were held on charitable trusts, I do not see that the Defendants can derive much assistance from this case. The £3000 was effectively a charitable donation towards the construction of the premises and the use of the premises was to be for a charitable purpose. That was not the issue in the case (the Attorney General was not a party) and BOTHCA itself was arguing that it had a beneficial interest in the premises rather than that they were held on a charitable trust.

282. As noted above, Sales J categorised it as a "*constructive trust*" but there was no analysis as to why it was a "*constructive trust*" and anyway it was conceded. BOTHCA was actually arguing for a constructive trust in its favour on the basis of its contribution to the cost of acquisition and construction of the premises (see para [104]). (I do not know

why resulting trust was not being argued.) Alternatively, it was claiming pursuant to the doctrine of proprietary estoppel. In both cases BOTHCA was saying that its beneficial interest in the premises was held by it on charitable trust for the benefit of the local community (it was in any event a charitable association – cf HPCC). Sales J rejected these arguments (see paras [107] to [109]) and this was on the basis, it seems to me, of the concession that both the £3000 and then the premises were impressed with a charitable trust. Then Sales J continued in para [110] to say as follows (underlining added):

> "110. The significance of the agreement by LCC to develop premises, which would include a community centre and school hall which could be used part of the time for the benefit of the community, was that when LCC received the contribution it would thereafter have been inequitable for it to have treated that contribution as a simple accretion to the general funds of the Council. Instead, in my view, LCC became bound to hold the property comprising the Premises as property impressed with a trust to be used in part for the charitable purpose of providing premises which could be used for the benefit of the community and the parish. <u>It was common ground between the parties that if this analysis were adopted, the relevant trust would again be a constructive trust,</u> arising from the way in which LCC's conscience as land-owner would be affected by the circumstances in which it accepted the contribution, so that no written record of the trust would be required: see section 53(2) of the Law of Property Act 1925."

283. As it was agreed that this was a constructive charitable trust, there did not need to be any detailed analysis as to how that was so. It was categorised as a constructive trust so as to avoid the written record requirements if it was an express charitable trust. There was no citation of the *Richmond* and *Liverpool* cases and this was not a contest between land being held by a local authority for its statutory purposes or on charitable trusts. Sales J actually concluded that the premises were held wholly by LCC on charitable trusts:

> "115. This is by way of an aside since, in my judgment, the true position is that from 1963 LCC held the beneficial interest in the property on charitable trusts, to provide for the use by and benefit of the community in the parish and also for educational charitable trust purposes to provide a Church of England primary school in the parish."

284. I accept, as was submitted by Mr Cottle, that it is implicit in the reasoning of Sales J that he was prepared to contemplate that the premises could be held by LCC partly on charitable trust and partly pursuant to its statutory purposes. But that is not what Mr Cottle was principally arguing for in relation to the Property. His main case was that Brent holds the whole Property on charitable trust, but as that issue of charitable trust was conceded by LCC in the *Dore* case, I do not see that the case helps him. Furthermore, there was a direct contribution of charitable funds towards the construction costs, which is very different to HPCC's so-called contribution.

285. Mr Cottle also referred me to *Bath and North East Somerset Council v. the Attorney-General* [2002] EWHC 1623 (Ch) a decision of Hart J. This concerned whether a conveyance of the Bath and County Recreation Ground to the claimant's predecessor was on valid charitable trusts or pursuant to its statutory purposes or some other form

of trust. The terms of the 1956 conveyance were crucial because it expressly stated that the land was held by the Corporation "*upon trust*". The actual words of the habendum were as follows:

> "TO HOLD the same unto the Corporation in fee simple upon trust that the Corporation for ever hereafter shall manage let or allow the use with or without charge of the whole or any part or parts of the property conveyed for the purpose of or in connection with games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character and for no other purpose…"

286. The first question that Hart J had to decide was whether a trust was created by the conveyance or whether it was owned beneficially by the Corporation for its statutory purposes. The second question was, if a trust was created, whether it was a valid charitable trust. To my mind, this is the correct way of approaching the questions arising in this case and they are separate questions; is the Property held on trust by Brent or beneficially – the normal rules about trust creation apply. Then one can look at whether a charitable trust has been created.

287. In considering the first question, Hart J looked at both the *Richmond* and *Liverpool* cases, pointing out that there was no reference to a "*trust*" in any of the material documentation in those cases. The argument for the claimant on this aspect largely turned on whether the words "*upon trust*" in the conveyance should be read as if they merely meant "*and so that*". That appears to have been a very bold argument and it did not find favour. Hart J concluded that the words "*upon trust*" should be given their conventional meaning which in the context of a conveyance of land drafted by lawyers is the technical meaning that the land was indeed held upon trust. It is obviously a material distinguishing feature that there is no mention in any of the documentation around the acquisition of the Property that it would be held on trust.

288. Hart J then went on to consider whether, given that the land was held on trust, it was a charitable trust. He decided that it was, after reviewing a number of authorities including *IRC v Baddeley* (supra) and the *Brisbane City Council* case (supra). But that part of the judgment is not relevant to this case as it is not disputed that such charitable purposes are probably established. The interesting and valuable part of the decision is the first question because this indicates to me the importance of establishing that the relevant parties intended that the Property be held on trust.

289. After this review of the authorities I can summarise my conclusions in the following propositions:

(1) In order to establish that a property is held on charitable trust, it is insufficient to say that the property was acquired or to be used for charitable purposes;

(2) The prior question, as demonstrated by the *Bath and North East Somerset Council* case, is whether the owner of the property is holding it on trust;

(3) As shown by the *Brisbane City Council* case, and the *Richmond* and *Liverpool* cases, in order to create a trust there has to be an intention to do so;

(4) That intention can be proved by reference to a number of factors, including and probably most importantly, whether the documents of or relating to the transfer indicate that the registered proprietor does not hold the property beneficially and instead holds it on trust;

(5) I do not consider that a charitable constructive trust can come into existence merely because a property was acquired for arguably charitable purposes if the parties do not intend it to be held on such a trust; in the *Dore* case, the constructive charitable trust was conceded but that was on the basis that charitable money had actually been contributed to the overall acquisition and construction costs.

(d) Application to the facts of this case

290. I have already found that there was no trust of the Property in favour of HPCC. The Defendants rely on much the same evidence in support of their claim to a charitable trust. By way of summary, Mr Cottle referred to the following:

(1) Brent could not have obtained the Property from its own resources and needed external funding;

(2) Such external funding from the DofE and GLC "*had HPCC's name on it, was imperatively dedicated, and it was not intended to be at the free disposal of Brent to use for other projects*";

(3) The funding from the GLC that was subject to the covenant that the Property could only be used for the "*Community Project*" was the equivalent of a donor or settlor of trust funds for a charitable purpose;

(4) The purpose of the acquisition was for the community and it was never intended to be a Council facility;

(5) The intention was to grant a long lease to a community co-operative that would itself have charitable status;

(6) The only reason that Brent was able to purchase the Property for £1.8 million was because of HPCC's campaign in which they got a six month period to negotiate with LTE and were able to attract a lot of political attention and the grant monies;

(7) There was no "*magic*" in the use of s.120 of the Local Government Act 1972 as Brent could equally well have used other statutory powers (such as s.119 of the Town and Country Planning Act 1971 or s.137 of the Local Government Act 1972) and it was merely a conveyancing mechanism without any impact on the intended charitable purposes for which the Property would be held.

291. The only new fact within the list above is that it was envisaged that the proposed new community co-operative might have charitable status. However that is not particularly relevant as the reason for that was predominantly so that it could get relief from business rates and to assist in fundraising efforts – see for example the reference to this in para 2.3.5 of Report 15/82 of 9 February 1982.

292. On virtually the same evidence and submissions put forward by the Defendants, I have concluded, in the private trusts sections above, that there was no common intention and no "arrangement or understanding" between Brent and HPCC as to the existence of third party beneficial interests in the Property such as might found a constructive trust; nor were there any representations or assurances by Brent in relation to the present or future interests in the Property such as might found a proprietary estoppel. That being so, and there being no other evidence adduced to show that Brent had the intention to hold the Property on trust for charitable purposes - in fact all the evidence from Brent points the other way that there was no such intention - there is no basis whatsoever for saying that Brent did have the requisite intention to hold the Property on trust. I do think it is highly material (though not conclusive), as it was in the *Richmond* and *Liverpool* cases, that the transfer, drawn up by lawyers, does not indicate that the Property was being held on trust for charitable purposes (or for any other person) and instead simply refers to the s.120 statutory power and the fact that it was being acquired "*for the purpose of the provision of Community facilities*". Nor are there any words in any relevant contemporaneous document, including the December 1981 Report, that suggests the creation of a trust.

293. The purposes for which the Property was bought and its intended use can be described as charitable but that is insufficient for Brent to be bound in perpetuity to hold it on trust for such charitable purposes. Brent has to have agreed to such a commitment but it clearly did not have any such intention. It did intend to allow the Property to be managed by the community in a novel and unique way including receiving the income to pay costs and reinvest but I do not believe that it ever contemplated that it would be obliged at all times to maintain the Property for the same original charitable purpose and that it would be bound to seek the approval of the Charity Commission for a disposal of the Property.

(e) Conclusion on charitable trust issue

294. In all the circumstances, because of the lack of any evidence of an intention on the part of Brent and, so far as I can tell, HPCC that Brent would hold the Property on trust for charitable purposes, I reject the Defendants' charitable trust arguments.

L. THE APPROPRIATE REMEDY

295. The main relief sought by Brent is the declaration that it is the sole legal and beneficial owner of the Property. Brent also seeks an injunction restraining the Defendants from entering a restriction upon the Property's registered title. While both forms of relief are resisted by the Defendants, they recognised that they could not really argue against the declaration if they lost on all of their trust arguments, as they have. They do however strongly object to the imposition of an injunction.

(a) Declaration

296. The basis for the court's jurisdiction to grant declaratory relief is now well-established. It derives from section 19 of the Senior Courts Act 1981 and CPR 40.20. The relevant

principles have been authoritatively set out in *Rolls-Royce plc v Unite the Union* [2010] 1 WLR 318, at para [120] per Aikens LJ:

> "(1) The power of the court to grant declaratory relief is discretionary.
>
> (2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
>
> (3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question.
>
> (4) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue.
>
> (5)...
>
> (6) …the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court.
>
> (7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised. In answering that question it must consider the other options of resolving this issue."

297. In my judgment, this is plainly a case where the above tests are satisfied and in which it would be appropriate to grant the declaration sought by Brent. This has been the trial of the matter in which I heard and read extensive evidence from both sides, together with full oral and written submissions. All the possible arguments in favour of Brent holding the Property on trust or there being some sort of beneficial interest other than Brent's have been exhaustively researched and canvassed. There is no doubt that there is a "*real and present dispute*" between the parties and that they will be affected by my determination of the issues, whether by enabling Brent to proceed with its plans to sell off part of the Property and deliver a newly enhanced leisure and community centre, and by resolving whether the Defendants had the right to register a restriction.

298. As to the final overarching test as to whether this is the most effective way of resolving the issues between the parties, it seems to me that there is no other suitable way of reflecting my conclusions on the issues raised by the Defendants as to their alleged beneficial interests in the Property. While it could be said that the proposed injunction could be an effective way of disposing of this matter, I think it is important that, having heard all possible arguments in relation to other beneficial interests in the Property, including that it is held for charitable purposes, the basis for any such injunction should be encapsulated in the form of a declaration. Further the declaration may have wider implications in relation to any future similar claims being made by other parties.

299. I therefore will make the declaration sought.

(b) Injunction

300. Brent seeks an injunction against both Defendants in the following form:

> "An order restraining the registration of any restriction upon the Property's registered title …in favour of [either or both of the Defendants]"

301. Mr Cottle submitted that an injunction, with the threat of a prison sentence if Mr Johnson acted in breach of it, was too extreme a remedy in the circumstances of this case. He said that the declaration should be good enough for Brent's purposes as the Registrar would be bound not to register any future restrictions applied for on the basis that the declaration as to Brent's sole legal and beneficial ownership is at least binding on the Defendants. He was effectively submitting that an injunction would be using a sledgehammer to crack a nut. Mr Cottle referred to *South Bucks DC v Porter* [2003] 2 AC 558 in order to say that the grant of an injunction to a local authority is a matter of great delicacy particularly where there are other available procedures. However, that case concerned the local authority as the local planning authority and seeking an injunction to enforce public law. Lord Scott said that this was very different to a local authority enforcing its private property rights, in which case it should be regarded as any other private property owner (see para [101]).

302. Ms Holland QC referred me to *Red River UK Ltd v Sheikh* [2007] EWHC 2654 (Ch), another decision of Briggs J (as he then was) in which he said at para [49]:

> "It is well established that the Court may prohibit by injunction the making of misconceived applications to the Land Registry where their consequence would be improperly to interfere with the rights of the registered proprietor, even in the absence of any contractual relationship between the parties prohibiting such conduct."

303. That general principle seems apposite here. I have rejected all the Defendants' arguments in support of their alleged right to register a restriction against Brent's title to the Property. That includes the Defendants' wholesale attempted change of case during the trial. In particular, I have held that they have no standing to apply to register a restriction. While the declaration will in all likelihood prevent the registration of any such restriction, in my view Brent ought to have further protection from misconceived applications that may be made by either or both of the Defendants.

304. Mr Johnson frankly admitted in cross-examination that "*he just wanted to stop Brent selling the place*" and that this was what had motivated him to get back involved with Bridge Park and to mobilise the resistance. It is palpable how strong the feelings are within HPCC and the local black community to prevent Brent selling off part of it and "*profiting*" from something they now see as their own, even though they had not been involved in it for some 25 years. While understanding how those feelings might have arisen, they have, in my view, gone to quite extreme lengths in order to disrupt any sale of the Property by Brent, including: applying for registration of a restriction; transferring to a new limited company; running every conceivable argument as to a beneficial interest; and radically changing their case on the facts during the trial. The only conceivable purpose of setting up SCT was for Mr Johnson and/or the HPCC members to try to avoid personal responsibility for applying to register the restriction. It indicates, in my view, a determination on the part of the Defendants to try anything

to take back control of Bridge Park while also being conscious of the potential personal liabilities that might arise as a result of taking such action.

305. In my judgment, and in accordance with the general principle expressed by Briggs J in the *Red River* case (supra), it is not enough to grant the declaration and the Defendants need to understand that they are not allowed to make any more applications to register a restriction. Any landowner which is the sole legal and beneficial owner of a property is entitled to deal with that property without any interference from third parties, particularly those who have been found by a court after a full trial to have no interest in the property, and the court should ensure that that freedom is protected. I do not have sufficient confidence that, without the injunction being in place, there will not be further attempts to stymie the sale on what would now be clearly misconceived grounds.

306. Accordingly, I think it is in the interests of justice to grant the injunction subject to one point. Brent seeks an order "*restraining the registration of any restriction*". As I think Mr Cottle was trying to point out, such an injunction should more properly be directed at the Registrar as they are the only one who can register a restriction. Briggs J referred to injunctions prohibiting "*the making of misconceived applications to the Land Registry*…" and it seems to me that it would only be appropriate to restrain that which the Defendants were able and threatening to do. Therefore, I am prepared to grant the injunction but it will need to be reworded so as to restrain the Defendants from making any applications to register a restriction against the Property.

M. DISPOSITION AND CONCLUSION

307. Based on the above reasons, I make the declaration sought by Brent and the injunction in the amended form as explained above.

308. I do not want to end this judgment on that note. While I have been somewhat critical of the Defendants' strategy of opposition to Brent's proposals in relation to Bridge Park, I am saddened that it has been necessary for this dispute to be determined by me in a long judgment that deals with the legal position in relation to the ownership of Bridge Park. The fact that I am delivering this judgment means that the mediation and settlement talks have failed to reach an outcome satisfactory to both parties. As I said at the beginning of this judgment, a trial of the issues before me is not the way to resolve the real issues between the parties. This dispute has come to a head in the context of understandably heightened tensions within the black community and the important focus on the Black Lives Matter movement. While the parties may be able to take such matters into account in seeking to resolve their differences out of court, I cannot do so. I had to decide the case on the facts surrounding the acquisition nearly 40 years ago and the law.

309. I totally understand that Bridge Park was Mr Johnson's conception and that the critical aspect of it, if it was to work and the riots were to be avoided, was that it would be run and managed by the local community for the local community without any direct involvement of Brent. Brent understood this, as did central government and the GLC, and they all shared Mr Johnson's and HPCC's philosophy. Everyone wanted it to succeed in that way as the stakes were so high. And, for a time, it did succeed. But the failure to set up a community co-operative or to agree the terms of a lease to the Steering

Group Company, then the break-down of relations between HPCC and Brent leading to Brent's repossession of Bridge Park and, for the last 25 years, HPCC being completely uninvolved in its management, all undermine HPCC's claims to a beneficial interest. Those facts also confirm that the absence of any reference in any of the documentation to Brent holding the Property on trust whether for charitable purposes or HPCC or anyone was deliberate, reflecting the understanding of the parties that Brent did not hold the Property on trust. Instead the Property was held beneficially by Brent for its statutory purposes which are essentially to act in the best interests of the community, as I believe Brent is striving to do with its proposals for Bridge Park. Mr Gutch, the Defendants' witness, admitted that "*at the end of the day, the asset was Brent's*" even if it was acquired so as to be run by the community and even if the community aspired at some stage to own it.

310. It is obvious that something needs to be done to Bridge Park. Brent cannot just allow it to languish and be of diminishing use to the community. Brent has to respond to the current needs of the community but says it can only provide a newly enhanced leisure and community facility if it sells off part of the Property. It is not right, in my view, for Mr Johnson and HPCC to claim a veto on anything that Brent may wish to do with the Property based on an inaccurate recollection of what was said at the time of the acquisition. All of Brent's witnesses paid glowing tributes to Mr Johnson and the tremendous achievements of HPCC. I do too. But now that the legal issues have been resolved in my judgment, I would again urge the parties to move on and seek to achieve, by mutual co-operation and agreement, the best outcome for Bridge Park and the local community.

311. If there are costs and/or other consequential matters that cannot be agreed between the parties, then a further hearing can be arranged through the usual channels.

312. It only remains for me to thank all those involved on both sides for successfully getting the case ready in the short amount of time they had and for assisting the court in managing this trial in the difficult circumstances of the Covid-19 pandemic.