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Your ref:
Our ref: WS/CM/210139/0021/LAR

10 November 2014

Dear Sirs

Fence between Alexandra Park and Hornsey Reservoir

We write on behalf of our client Alexandra Park and Palace Trust (the "Trust"), whose land borders Thames Water's Hornsey Reservoir on its north-west edge.

1. Background

- 1.1 At the end of September, Thames Water contractors entered the park without permission or prior notice and erected a large metallic fence topped with razor wire on the Trust's side of the reservoir boundary. In the process, they also cut off three wooden rails from the Trust's existing fence.
- 1.2 The Trust wrote to Thames Water's contact centre through your website and received a response from Liz Cipko of Customer Resolution on 1 October 2014. Ms Cipko advised that the contractors would arrange for the wooden fence to be reinstated. However, she failed to comment on our client's complaint that the fence had been erected on Trust land in what amounted to an act of trespass.
- 1.3 In early October 2014, Thames Water's contractors returned and re-set the fence on the reservoir side of the boundary, albeit Thames Water failed to reinstate the Trust's wooden fence. Despite this and now being aware of the Trust's discontent, Thames Water once more made no attempt to consult with our client over the position, extent or style of the proposed fence nor to explain the necessity for it. As a result, the Trust land is now bordered by an unreasonably large and unattractive fence which blights the aesthetic appeal of part of the park and represents a clear danger to the public given the low hanging razor wire. In particular, its location immediately in front of a bird-watching platform spoils the view and undermines the whole purpose of the platform.

2. Breach of statute

- 2.1 The Town and Country Planning (General Permitted Development) Order 1995 requires planning permission to be sought for any new fence over two metres in height. Given that the fence is manifestly over two metres and Thames Water has failed to obtain planning permission, you are clearly in breach of the Order.

- 2.2 It is our client's contention that the failure on your part to apply for planning permission is due to the improbability that such permission would have been granted. As you will be aware, both the reservoir and the park are conservation areas. When determining a planning application within a conservation area, the local planning authority ("LPA") is under a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area (Section 72 Planning (Listed Buildings and Conservation Areas) Act 1990). In this case, it would be difficult to argue that the fence did anything other than drastically diminish the character and appearance of that area of the park. Consequently, it seems highly unlikely that Haringey Council, being cognisant of this duty, would have granted or would now grant permission for the fence.
- 2.3 Further, it should be noted that the threshold that any countervailing argument must reach in order for an LPA to override this duty is extremely high. In a recent case (*Sabi v Secretary of State for Local Government and the Regions* [2002]), a householder erected gates at his house following physical attacks on members of his family. The house was in a conservation area and he only applied for planning permission after erecting the gates. The planning inspector refused permission on the grounds that the public interest in the preservation of the conservation area's character and appearance outweighed the householder's rights under the European Convention on Human Rights and that, as a result, the gates should be removed. This decision was upheld by the High Court.
- 2.4 It seems highly unlikely that, in the current case, Thames Water would be able to provide sufficient justification for Haringey Council to override their duty. This is particularly true in light of the fact that the fence represents little practical deterrence to unwarranted access to the reservoir (if such is its intention). Alongside the new fence are hundreds of metres of steel palisade fence which can still be climbed. It is, therefore, difficult to discern what function the fence is currently serving other than to diminish the character and appearance of both the park and the reservoir.

3. Breach of the Trust's common law rights

- 3.1 The fence also represents an unreasonable interference with the Trust's property rights causing a loss of enjoyment of our client's property. As a result, were it to pursue it, the Trust would have a strong claim in common law nuisance, a cause of action for which a defendant's acquisition of planning permission does not, in any case, provide a defence.
- 3.2 The unreasonableness necessary to establish such a claim can be demonstrated by the diminution in the aesthetic quality of the part of the park bordered by the fence and the undermining of the platform as a viable site from which to view birds, when set against the impracticality of the fence itself as a deterrent, as stated above (Paragraph 2.4).
- 3.3 The fact that Thames Water has never sought to contact the Trust to explain the need for the fence or to discuss how they might work to alleviate any concerns the Trust may have had are further examples of the unreasonableness of Thames Water's actions.

4. Occupiers' Liability

- 4.1 We would also remind you of the responsibilities imposed on occupiers of land by the Occupiers' Liability Acts of 1957 and 1984 ("the 1957 Act" and "the 1984 Act").
- 4.2 Under the 1957 Act, both Thames Water and the Trust have a common duty of care to all visitors to the park and reservoir to take such care as in all circumstances is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he or she is invited or permitted to be there. The fact the fence's razor wire is, in places, below five feet from the ground presents a clearly foreseeable risk to any visitors to the reservoir. As such our client requires this situation to be remedied immediately, in default of which you are on notice that should a claim be issued against the Trust they will look to Thames Water to indemnify them for any damages and costs awarded.
- 4.3 Under the 1984 Act, Thames Water also has a duty to trespassers with respect to any risk of which it is aware. Given Thames Water and the Trust are on notice of this risk, our client again requires this to be remedied immediately. As set out above our client will look to Thames Water to indemnify them in respect of any claims brought.
- 4.4 It goes without saying that, in attempting to discharge its duties under the 1957 and 1984 Acts, Thames Water could further diminishing the character and appearance of the conservation area and cause further unreasonable interference with the Trust's enjoyment of its property rights.

5. Remedies

- 5.1 The Trust requests that Thames Water remove the fence at the earliest possible opportunity and replaces this with fencing of a similar style to that which was originally there. In addition to which the Trust requires Thames Water to reinstate the Trust's wooden fence and posts removed by Thames Water without consent.
- 5.2 The Trust would also be grateful for an apology for Thames Water's conduct in this matter, in particular its contractors' trespass on Trust land and criminal damage to its property, and would welcome a donation as compensation.

Yours faithfully

Bates Wells Braithwaite