

Appendix 2



ICOS NO 2018/026370/01

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THE ROYAL COURTS OF JUSTICE OF NORTHERN IRELAND

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RURAL INTEGRITY (LISBURN 01) LIMITED

-V-

PLANNING APPEALS COMMISSION

JUDICIAL REVIEW

HEARD BEFORE

LORD JUSTICE WEATHERUP

ON

7<sup>th</sup> June 2018

## APPERANCES

MR DUFF appeared on behalf of the Applicant Rural Integrity (Lisburn 01)

MR MCATEER appeared on behalf of the Respondent PAC

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1 LORD JUSTICE WEATHERUP: Yes, thank you. This is an application by Rural  
2 Integrity (Lisburn) Ltd for leave to apply for judicial review of a decision of the  
3 Planning Appeals Commission of the 11th December 2017, by which it allowed an  
4 appeal against the refusal of planning permission by Mid and East Antrim Borough  
5 Council for an infill site at 50 and 52 Ballee Road West in Ballymena.

6  
7 The Applicant has filed an amended Order 53 statement, and by that Order 53  
8 statement it raises a series of issues in relation to the grant of a planning permission. I  
9 draw attention, I think for present purposes, simply to two of the matters that arise.  
10 First of all, at paragraph 28 of the amended Order 53 statement it said that the central  
11 argument by the Applicant is that the SPPS states the guidance in building on tradition  
12 issued to clarify PPS21 must be followed, and it appears that the Respondents failed to  
13 consider this, both by lack of reference to it or by noticeable lack of reasons why it is not  
14 appropriate to follow the guidance.

15  
16 At paragraph 61 under the heading Definition of Buildings Drawn from PPS 21 and  
17 Building on Tradition Combined, it stated that there are 10 pages of literary and  
18 diagrammatic explanation, and on reading them it is clear that buildings are treated in a  
19 similar way in the various policies, and that these plots contain existing buildings and  
20 that ancillary buildings are not granted any status.

21  
22 These two particular points claim to feature large in this application which, in essence,  
23 indicates that the authorities, both in the local councils and in Planning Appeals  
24 Commission have been misapplying planning guidelines according to the  
25 plaintiff - according to the Applicant. We are, however, at a preliminary issue stage and  
26 the issue stage is to whether or not the Applicant, in this case the limited company, has  
27 standing.

28  
29 The grounding affidavit in the case explains the status of the Applicant as a company,  
30 which has been established according to the grounding affidavit of Gordon Duff, who is  
31 the company director and a director of Rural Integrity (Lisburn) Ltd, which has been set

1 up to challenge planning decisions in the rural areas of Lisburn and Castlereagh  
2 Borough Council. He there avers that this is one of over a dozen such infill applications  
3 approved by the council over the last three months that the Applicant is concerned  
4 about. He explains at that time what his issue was, which was to do with the  
5 interaction between two planning documents. The first one was PPS21, Sustainable  
6 Development in the Countryside issued in June 2010. The second one was Strategic  
7 Planning Policy Statement, Development in the Countryside, of 2015. Mr Duff's point  
8 was that these documents had been misunderstood.

9  
10 Now, that argument has been refined and expanded to the extent that I have referred to  
11 the two particular issues in the amended Order 53 statement, and by particular  
12 reference to a further guideline document issued in 2012 entitled Building on Tradition,  
13 which the present emphasis is on by which Mr Duff indicates that attention has not  
14 been paid to this document in making infill decisions.

15  
16 Also, since the matter was originally developed, attention has been drawn to a decision  
17 by Mr Justice McCloskey of 9th March 2018, which is McNamara v Lisburn and  
18 Castlereagh Council, which was dealing with the effect of the two planning documents  
19 to which I've referred. As I have said, the Applicant's argument has been that those two  
20 documents were not properly applied.

21  
22 The amended Order 53 statement to which I've referred was a result of further  
23 consideration of the guidelines and of the McNamara case by Mr Duff. So, as is usual  
24 with these judicial review applications, it has become somewhat refined since it  
25 originated.

26  
27 The relevance of all this for the purpose of this application is that in the 2012 document,  
28 there is a planning policy which is called CTY8 on ribbon development. It states that:  
29 "Planning permission can be refused which creates or adds to a ribbon of development".  
30 Then it says: "An exception will be permitted for development of a small gap site  
31 sufficient only to accommodate up to a maximum of two houses within an otherwise

1 substantial or continuously built-up frontage". A substantial and built-up frontage is  
2 defined as "including a line of three or more buildings along a road frontage without  
3 accompanying development to the rear".

4  
5 The 2015 document to which I have referred includes at paragraph 6.73 under the  
6 heading Residential Developments a number of bullet points. The fourth one is infill  
7 ribbon development which states, "Provision should be made for the development of a  
8 small gap site in the otherwise substantial and continuously built-up frontage.

9 Planning permission will be refused for a building which creates or adds to a ribbon of  
10 development". So, it is differently stated to the 2012 document but the 2012 document  
11 is reserved and still applies.

12  
13 Further, at paragraph 6.78 of the 2015 document, "Supplementary planning guidance  
14 contained within Building on Tradition, a sustainable design guide for the Northern  
15 Ireland countryside, must be taken into account when assessing all development  
16 proposals in the countryside". That then takes us to the 2012 document which provides  
17 the guidelines. Again, I'm not going to go through the details of that but, for example,  
18 on page 70 it refers to CTY8 ribbon development, which sets out the circumstances in  
19 which a small gap site can in certain circumstances be developed. So, it qualifies the  
20 circumstances in which a small gap site may be developed. For example, at page 71 it  
21 says, "Sometimes a ribbon development does not have a consistent building set back.  
22 Where this occurs, the creation of a new site in the front garden of an existing property  
23 is not acceptable under CTY8 if this extends the extremities of the ribbon".

24  
25 Then on page 73, "What is not a gap site?" At 4.50: "There will also be some  
26 circumstances where it may not be considered appropriate under the policy to fill these  
27 gap sites as they are judged to offer an important visual break in the developed  
28 appearance of the local area".

29  
30 What this application comes down to is that the planning authorities have not been  
31 giving consideration to this guidance, and the provision that there may be cases where

1 there is a gap but the visual break may be paramount rather than the infill. That is the  
2 character of the guidance which it is said has been disregarded by the planning  
3 authorities.

4  
5 There is the second point to which I have already referred, namely "what is a building"  
6 for the purposes of ribbon development and infill; and are what are called ancillary  
7 buildings such as garages and garden sheds buildings for the purposes of such infill?

8  
9 Now, I return to the point of this hearing, which is standing. On the Respondent's case  
10 of standing, the Applicant in this case is limited in its objects to addressing planning  
11 issues in the Lisburn and Castlereagh district, whereas this is a challenge to premises in  
12 Ballymena. Further, it said that the company has no assets. More than that,  
13 Mr McAteer on behalf of the proposed Respondent, really sees this application by the  
14 limited company as an exercise in effect avoiding costs, although he didn't put it quite  
15 as strongly as that, because the company having no assets won't find itself liable or  
16 won't be able to meet any costs should it be unsuccessful. This is a point which is really  
17 alleging abuse of process, I think.

18  
19 Further, it is said that the Respondent in this case is the Planning Appeals Commission,  
20 and that there are a series of other cases here in which it is the councils which are  
21 making the planning decisions, and two of the other cases concern the Lisburn Council  
22 making the decisions. If this is indeed a challenge to be made, says the Respondent, it  
23 ought to be directed against a case that involves a decision, a planning decision by the  
24 Council, and preferably one involving Lisburn Council if it is to be this Applicant  
25 because its objects are so limited.

26  
27 On the other side, the Applicant says that the proper respondent in this case is the  
28 Planning Appeals Commission because it makes the decisions on appeal from the  
29 councils, and its rulings apply to all the councils. And further, this applies - this  
30 therefore includes the Lisburn and Castlereagh Council where the Applicant operates.

31

1 Now, for the purposes of determining standing, the provision in the 1978 Judicature Act  
2 and in Order 53 provides that the Applicant on a judicial review must have sufficient  
3 interest. So, the issue becomes what is sufficient interest for this purpose. It is  
4 recognised that there may be those who are not directly involved in a particular  
5 decision, such as lobby groups or pressure groups, who may be included as people with  
6 sufficient interest. It is clear to me anyway that Rural Integrity is what you might call a  
7 lobby group; it has been set up by Mr Duff to be a lobby group or a pressure group.  
8 That is not in itself a grounds for exclusion if they are sufficiently representative. I have  
9 heard a case myself involving Friends of the Earth, which is also a lobby pressure  
10 group. That decision is reported in 2007 NI 33.

11  
12 Also the Court of Appeal in this jurisdiction has looked at pressure groups and lobby  
13 groups in D's application which is reported in 2003 NI 295. The provisions of that - the  
14 requirements of that are summarised in Gordon Anthony's book on judicial review. I  
15 refer to that at paragraph 3.68 where he says, "There are four generally valid  
16 propositions about the current judicial abuse to standing". And they are one, that  
17 standing is a relative concept to be deployed according to the potency of the public  
18 interest content in the case. Two, that the greater the amount of public importance that  
19 is involved in the issue before the court, the more readily the court should be to hold  
20 that the applicant has the necessary standing. Three, that the focus of the courts is more  
21 upon the existence of the fault or abuse on the public authority than the involvement of  
22 personal right or interest in the part of the applicant. Four, that the absence of another  
23 responsible challenger is frequently a significant factor so the matter of public interest  
24 or concern is not left unexamined.

25  
26 So, the whole focus there is on identifying whether there is a public interest issue that  
27 requires to be addressed. Then there are various ancillary matters. So, is there a public  
28 interest issue here that needs to be addressed? Well, it is contended that there is a public  
29 interest, which is that the Planning Appeals Commission and the councils do not  
30 appear to take into account the guidance provided in Building on Tradition in assessing  
31 infill requirements on planning for ribbon development instances. The Respondent

1 says simply that it is not referred to, as it hasn't been raised in any particular case and  
2 therefore it is not necessary to address it.

3  
4 In this case it is said that it is not a reason for the decision that was taken by the Council  
5 on the particular infill. That is correct, it is not one of the reasons given. There are two  
6 reasons given, which are to do with the interaction of the planning policy documents to  
7 which I have referred, and I will not repeat that. It is necessary to point out, as Mr Duff  
8 has done, that the local authority decision does make a reference to the issue of visual  
9 break, although it is not specifically identified in the reasons for the decision. So, this  
10 issue about visual break, which is an issue that arises out of the guidance, is a matter  
11 relied on by the Council in its reasoning, if not its reasons, for the outcome.

12  
13 The Planning Appeals Commission discusses the two reasons that are given. It does  
14 not address the issue of visual break, and it is not apparent in looking at the decision  
15 that it addresses the issues raised by the guidance, namely that having identified a gap,  
16 it is not sufficient to ask is the proposal appropriate to fill the gap. There is a  
17 preliminary question: Should the gap be filled at all and, if so, the second question  
18 becomes is the proposal appropriate to fill the gap?

19  
20 It seems to me that there is a public interest issue here which is not being addressed, or  
21 at least arguably so there is a public interest that is not being addressed. Therefore, the  
22 question arises as to whether the applicant company should be permitted to make that  
23 challenge.

24  
25 Now as I have said, the Applicant is a pressure group/lobby group. It is noted that its  
26 objects are limited to the Lisburn Castlereagh area. It is said, however, that the  
27 decisions of the Planning Appeals Commission affect all, or have a bearing on and set a  
28 precedent for all planning decisions involving infill. That affects all within the Lisburn  
29 Castlereagh area. So, I am satisfied for the purposes of this exercise that the Applicant  
30 is affected in that its objects of overseeing, as it sees itself doing, planning permissions  
31 in the Lisburn and Castlereagh area is affected by the approach of the Planning Appeals



1 Commission to the various policies statements in guideline documents.

2

3 I am satisfied that there is a public interest issue here because on both grounds relied  
4 on - visual impacts and buildings - it is necessary to have a proper approach to the infill  
5 issue. Nobody else is taking up this public interest issue, it seems. There are a number  
6 of cases where the issue has arisen. It is an issue that ought to be examined. All of  
7 those factors combined seem to me to raise a question that requires examination. In the  
8 absence of anyone else and there being a public interest issue, I am satisfied that the  
9 Applicant should be permitted to raise the issue.

10

11 Now, there is an ancillary question that arises, that is raised by the Respondent and that  
12 is the issue of costs. The first element of that is that this is one of a number of cases  
13 which, as I understand it, raise the same issues, the same two issues; one about visual  
14 effect and the other about buildings. There are two more pending cases. Now, in the  
15 interests of costs, it is only necessary to have this looked at in one case and therefore  
16 only necessary for one case to go forward. This case against the Planning Appeals  
17 Commission seems to me to be an appropriate case to go forward, and that the others  
18 should stand back while this matter is considered. That is a management issue in  
19 relation to costs so as not to incur unnecessary costs in all the other cases.

20

21 The second issue that Mr McAteer raises is really to do with the costs in this particular  
22 case then, because he says that the Respondent has no assets and therefore if  
23 unsuccessful, there will be no recovery. He raises the issue of security for costs but isn't  
24 proposing, and accepts that he cannot make an order against the Applicant for security  
25 for costs. It is a factor that I have taken into account in determining whether or not the  
26 case should proceed but I'm not satisfied, given that there is a public interest issue that I  
27 feel ought to be addressed, that it is a ground for refusing the matter against the PAC to  
28 proceed.

29

30 However, I reserve the position as to how costs are going to be dealt with in the  
31 particular case because I accept that there is an issue. It is potentially a matter in some

1 cases, and I'm not saying it is this case, where an abuse of process could arise where  
2 parties form a company with no assets and thereby render themselves not liable to meet  
3 costs that might be incurred. That is an issue that is going to have to be addressed. I  
4 reserve how it is going to be addressed. But on the issue of standing, I am satisfied that  
5 the case should proceed.

6  
7 Now, at the same time, Mr McAteer, should I give leave or do you think that there is  
8 another step that is required between the grant of standing and the grant of leave, or  
9 should we move straight to that point?

10 MR MCATEER: No. I think in light of comments that my Lord has made, it may seem  
11 pointless to have a separate hearing when my Lord has considered the question of  
12 arguability as part of it.

13 LORD JUSTICE WEATHERUP: Well, I think that is probably best, so I grant standing  
14 and leave.

15 MR MCATEER: Yes. If I could raise one issue for the avoidance of doubt. The point  
16 was made that there is a question mark over whether we can apply for security for costs  
17 and I particularly drew the court's attention to Order 53 rule A, and indicated that I  
18 wasn't - yesterday I think it was, or two days ago - making an application for security of  
19 costs. My Lord is entirely correct on that basis. But I hadn't said that we would not  
20 make an application for security of costs.

21 LORD JUSTICE WEATHERUP: Yes.

22 MR MCATEER: It will be that we do and ask the court to rule on the issue on whether  
23 the application for security for costs can be made and that it be made.

24 LORD JUSTICE WEATHERUP: Well, as I said, I have reserved this whole issue about  
25 costs, whether it is done by way of security for costs or in some other manner.

26 MR MCATEER: Yes.

27 LORD JUSTICE WEATHERUP: I think the question as to costs is live not just to this  
28 case. I can see the bigger picture here about people coming in and the impact on public  
29 authorities of them having to incur costs.

30 MR MCATEER: Yes, my Lord. I am simply flagging up that ...

31 LORD JUSTICE WEATHERUP: Yes.

1 MR MCATEER: ... it could well be that we bring an application for security for costs  
2 order.

3 LORD JUSTICE WEATHERUP: I think the step on costs is to leave it for you to decide  
4 what your next move will be ...

5 MR MCATEER: Yes.

6 LORD JUSTICE WEATHERUP: ... in relation to that. Mr Duff is alert now to the fact  
7 that this is a real point.

8 MR MCATEER: Yes, my Lord.

9 LORD JUSTICE WEATHERUP: And that it will at some point have to be addressed.  
10 That being so, then I have granted standing, I have granted leave, we are reserving how  
11 the question of costs should be reserved - should be dealt with. What else?

12 MR MCATEER: My Lord, with respect to the question of standing, can I just confirm  
13 whether my Lord is - my Lord has ruled for the purpose of leave on the issue of  
14 standing. Are we free to revisit that at the final hearing?

15 LORD JUSTICE WEATHERUP: Yes.

16 MR MCATEER: Thank you, my Lord. Then, my Lord, I suppose we are into  
17 timetabling. If we could be allowed - I am trying to think of the summer vacation.

18 LORD JUSTICE WEATHERUP: Well, is the developer here? The developer was on a  
19 notice party, I think to the matter.

20 MR MCATEER: They are not here, my Lord, no.

21 LORD JUSTICE WEATHERUP: Has the developer contributed anything to the ---

22 MR MCATEER: He wrote in complaining that they had been served with limited  
23 papers in the matter.

24 LORD JUSTICE WEATHERUP: Well, I saw that.

25 MR MCATEER: Other than that, no, they haven't.

26 LORD JUSTICE WEATHERUP: This is for the development of developing houses, is it,  
27 two dwelling houses?

28 MR MCATEER: Yes.

29 LORD JUSTICE WEATHERUP: So, there is no practical urgency about it other than  
30 their personal desire to get on with it, I expect.

31 MR MCATEER: Yes, my Lord. We're not sure what they have or haven't done ---

1 LORD JUSTICE WEATHERUP: They haven't signalled any financial problems or  
2 anything that would arise?

3 MR MCATEER: No, my Lord. Of course, if there is anything of that nature, they are  
4 free to make an application and bring the matter back to court.

5 LORD JUSTICE WEATHERUP: Yes. So, they haven't said that.

6 MR MCATEER: I think the first thing would be to ensure that Mr Duff serves all of the  
7 papers on the third party. They would be entitled as a properly interested party to have  
8 the papers served on them.

9 LORD JUSTICE WEATHERUP: Yes.

10 MR MCATEER: And to then apply to be here and be heard in the case, if they wished  
11 to do so.

12

13 I suppose then we are into issues of housekeeping and timetabling. If I could ask my  
14 Lord if we could have two weeks within which to make any applications in respect of  
15 costs that has been left open. Then, my Lord, I am conscious of time ---

16 LORD JUSTICE WEATHERUP: This case isn't going to be dealt with until September.

17 MR MCATEER: It isn't, my Lord. I am conscious of two things ---

18 LORD JUSTICE WEATHERUP: And I think it should be dealt with by Mr Justice  
19 McCloskey, who has written the judgment on the existing case. It needs to be qualified  
20 now by points that are being raised.

21 MR MCATEER: Yes, my Lord.

22 LORD JUSTICE WEATHERUP: I think it would be appropriate that he should develop  
23 that.

24 MR MCATEER: Yes, my Lord.

25 LORD JUSTICE WEATHERUP: In other words, I am putting it back into his court.

26 MR MCATEER: No, I understand that. There were two issues. I was going to raise the  
27 issue of timetabling and then the issue of the Order 53 statement. At the moment it  
28 runs to, I think, almost if not over 100 paragraphs. I think there has been two identified  
29 grounds in the middle of it. It might be that Mr Duff could properly revisit that and  
30 provide a more coherent document. I leave that in my Lord's hands but it would  
31 certainly make it more manageable. When he spoke yesterday, it seemed to be at least a

1 much more refined attack.

2 LORD JUSTICE WEATHERUP: Did he give leave - well, he doesn't need leave to  
3 amend?

4 MR MCATEER: Well, he does need leave after the grant of leave; he doesn't need leave  
5 before the grant of leave.

6 LORD JUSTICE WEATHERUP: So, he doesn't need leave.

7 MR MCATEER: But we've no objection to it. I mean, we are inviting the court to give  
8 him ---

9 LORD JUSTICE WEATHERUP: The present amended one doesn't really count.

10 MR MCATEER: No, sir the present amended one does count because you don't need  
11 leave prior to the grant of leave.

12 LORD JUSTICE WEATHERUP: I see.

13 MR MCATEER: But now that leave has been granted, he will require leave to make a  
14 further amendment. We would invite the court to direct that he provides a  
15 substantially reduced and more focussed Order 53 statement any further affidavit if he  
16 wishes if he feels there is material within that is properly set out. I'm not inviting a  
17 further elaboration, if you like, but if there is material he thinks in removing from the  
18 Order 53 needs to be placed on an evidential footing, he can do that at the same time. If  
19 he needs two weeks; whatever he needs, I have no real objection to that, my Lord.

20 LORD JUSTICE WEATHERUP: This is for him to draw all his papers together? Now, I  
21 am not going into enter into whether he should delete this or delete that.

22 MR MCATEER: No, no, I am not asking my Lord to parse the grounds, I am simply  
23 asking that he himself focuses.

24 LORD JUSTICE WEATHERUP: That he should present it. Very well. Well, he's going  
25 to have to serve a notice now that the case has been granted leave, and you can tell him  
26 what that requires.

27 MR MCATEER: My Lord, it is a notice of motion.

28 LORD JUSTICE WEATHERUP: A notice of motion, yes. If you can tell him that what  
29 that is, if he doesn't already know.

30 MR MCATEER: Yes.

31 LORD JUSTICE WEATHERUP: He can put together a notice and an Order 53

1 statement with it if he wants to change that in some way.

2 MR MCATEER: I am sure Mr Duff has been round the block enough to draft his own  
3 notice of motion.

4 LORD JUSTICE WEATHERUP: No, I am not suggesting you draft it for him, only to  
5 tell him what it is.

6 MR MCATEER: Yes, my Lord.

7 LORD JUSTICE WEATHERUP: Or show him one, if you happen to have one there, so  
8 that he knows what he is doing. I think we should be assisting him as he is on  
9 unassisted.

10 MR MCATEER: Yes, my Lord.

11 LORD JUSTICE WEATHERUP: It only requires him to see what this notice look like.

12 MR MCATEER: Sorry, my Lord, I am not being flippant. I should say we will do that,  
13 my Lord. He has brought an application in the last couple of months in which he  
14 served his own notice of motion.

15 LORD JUSTICE WEATHERUP: Well then, no, he doesn't need it.

16 MR MCATEER: He is well familiar with it.

17 LORD JUSTICE WEATHERUP: Right. This notice and any amended Order 53, then  
18 two weeks to do that and in the affidavit, if there is to be one. I will explain it to  
19 Mr Duff in a moment. If we do that, then what is required then?

20 MR MCATEER: Any application in respect of security for costs within, say, two weeks  
21 thereafter, my Lord. And then subject.

22 LORD JUSTICE WEATHERUP: Well, not two weeks after because that is not going to  
23 be heard. Two weeks from now.

24 MR MCATEER: Okay. Two weeks from now, my Lord, yes.

25 LORD JUSTICE WEATHERUP: Get it on.

26 MR MCATEER: Yes, my Lord. My Lord, affidavit wise, I am conscious that ordinarily I  
27 would ask for four weeks but that is taking us into July at that stage. It may be that  
28 there is not very much affidavit evidence required when we have a written decision,  
29 but there may be some material, for example relating to what arguments were  
30 advanced before the ---

31 LORD JUSTICE WEATHERUP: Affidavit by 31 July then?

1 MR MCATEER: Yes, my Lord, thank you.

2 LORD JUSTICE WEATHERUP: Then that's it. Then we'll have...

3 MR MCATEER: Again, a rejoinder from Mr Duff. He is entitled to a rejoinder.

4 LORD JUSTICE WEATHERUP: Yes, very well. 15th of August.

5 MR MCATEER: And perhaps review early in the new term before Mr Justice

6 McCloskey.

7 LORD JUSTICE WEATHERUP: Yes. I'm going to list it for review on the 5th of

8 September and provisional hearing date on the 24th of September.

9 MR MCATEER: Sorry, my Lord. (Pause) Yes, my Lord.

10 LORD JUSTICE WEATHERUP: Mr Duff, I'm going to list the matter for review before

11 Mr Justice McCloskey on the 5th of September, and provisionally list it for hearing on

12 the 24th of September. Do those dates suit you?

13 MR DUFF: They do, my Lord.

14 LORD JUSTICE WEATHERUP: Then the position - is there anything else you want to

15 raise?

16 MR DUFF: Yes, my Lord.

17 LORD JUSTICE WEATHERUP: Yes.

18 MR DUFF: In my Order 53 in my relief, I have raised the issue of cost protection.

19 LORD JUSTICE WEATHERUP: Yes.

20 MR DUFF: And I submitted an affidavit, a statement of means on the company.

21 LORD JUSTICE WEATHERUP: Yes.

22 MR DUFF: At what stage would I ---

23 LORD JUSTICE WEATHERUP: Mr McAteer, cost protection?

24 MR MCATEER: I don't think he needs to respond to that until we put in our

25 application, my Lord, and then he can.

26 LORD JUSTICE WEATHERUP: But he wants cost protection.

27 MR MCATEER: Sorry, cost protection. Perhaps that can be dealt with at the same time.

28 LORD JUSTICE WEATHERUP: Yes. You'd better do it at the same time as the security

29 for costs issue.

30 MR DUFF: Yes, my Lord.

31 LORD JUSTICE WEATHERUP: And deal with them both together.

1 MR DUFF: Yes.

2 MR MCATEER: If no issue of proceeding with security for costs, we will confirm our  
3 position in writing to Mr Duff and allow it to be dealt with administratively, but in the  
4 meantime if we can reserve to have it dealt with at the same time as security for costs.

5 LORD JUSTICE WEATHERUP: Is there anything you require him to do? He has put in  
6 something about his means. Has he done what you require, or do you want anything  
7 else done?

8 MR MCATEER: I don't think there is any else we need done from him in respect of ---

9 LORD JUSTICE WEATHERUP: So, security for costs and protective costs order will be  
10 dealt with together.

11 MR MCATEER: Yes, my Lord. I mean, Mr Duff has made the assertion in his pleadings  
12 that it is an R.House Convention case. If that is correct, there would be no need to delve  
13 into means et cetera.

14 LORD JUSTICE WEATHERUP: Yes, very well then. Mr Duff, that will be dealt with at  
15 the same time as security for costs, so you will hear within two weeks from them what  
16 they're going to do about costs.

17 MR DUFF: I have one other issue, my Lord, which is very minor. The developer, I  
18 believe, didn't become a notice party.

19 LORD JUSTICE WEATHERUP: Sorry, the what?

20 MR DUFF: I believe the developer didn't become a notice party.

21 LORD JUSTICE WEATHERUP: He is a notice party.

22 MR DUFF: Yes. I inquired at the court office and I submitted all the original papers on  
23 the developer. I didn't see therefore any need - as they didn't become a notice party - to  
24 keep on serving all the papers.

25 LORD JUSTICE WEATHERUP: Well, I think they want to be on notice.

26 MR DUFF: I will do this if you require it. I am happy doing it.

27 LORD JUSTICE WEATHERUP: I think we should keep them informed. Whether they  
28 want to come in to do anything, that is up to them.

29 MR DUFF: Okay, my Lord.

30 LORD JUSTICE WEATHERUP: In summary, Mr Duff and Mr McAteer, the position is  
31 this: I am granting standing to this Applicant, and that will be revisited at the final



1 hearing as Mr McAteer has requested. I grant leave to apply for judicial  
review. The

2 Applicant then is to provide a notice of motion, and an Order 53 statement  
which

3 Mr McAteer is inviting you to edit.

4 MR DUFF: Yes.

5 LORD JUSTICE WEATHERUP: And you might consider doing that. Any  
affidavit that

6 you want to - any new affidavit, if you want to put one in. All of those matters  
are to be

7 dealt with and sent to them within two weeks. That bunch of papers is also to  
be sent

8 to the developer.

9

10 The costs issue in the case is being reserved. That is on two fronts; one, the  
Applicant is

11 looking at security for costs and will move on that within two weeks. Mr  
Duff's

12 application for protective costs will be dealt with at the same time whenever  
that is

13 dealt with. Outside both the protective costs order and the security for costs  
matter,

14 there is the more general costs issue about whether companies with no assets -  
how

15 companies with no assets are going to be dealt with if they bring these kinds of

16 applications repeatedly, which Mr Duff is proposing to do on some scale, it  
would

17 seem. That whole issue is reserved as well as the security for costs and the  
protective

18 costs issue.

19

20 Next, any affidavit that has to be filed by the Respondent will be by the 31st of  
July.

21 Any rejoinder to that from the Applicant by the 15th August. Review on the  
5th

22 September and the provision date for hearing is the 24th of September.  
Anything

23 arising?

24 MR DUFF: No, thank you, my Lord.

25 LORD JUSTICE WEATHERUP: Anything arising? No. Thank you.

26

27

28 *We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.*