FREETHS

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Councillor Janet Burgess M.B.E
London Borough of Islington Council
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Our ref: JXG/8760

Your ref: Janet Burgess M.B.E

By post and email to: *janet.burgess@islington.gov.uk; mark.christodoulou@islington.gov.uk*; *mark.sesnan@GLL.ORG*

Dear Councillor,

PROPOSED CLAIM FOR JUDICIAL REVIEW

We have been instructed by Mr John Barber to issue a claim for judicial review following your decision on behalf of the London Borough of Islington not to conduct a public consultation prior to your decision to proceed with the proposed trampoline park development at the Sobell Leisure Centre, where we are advised that substantive building works are due to start on 31 July 2017.

We expect in due course to be instructed by the rest of the core steering group, (comprising Barry Hill, Celia Clarke, Tamsin Oglesby and Jon Barnes), as well as other members of the petition referred to in greater detail below. Due however to the Council's decision to press on with this proposed trampoline park despite significant Sobell user and public opposition, not to mention recent adverse press coverage, our client has instructed us to send this formal Letter Before Action in accordance with the Pre-Action Protocol for Judicial Review as set out in the Civil Procedure Rules.

Our client believes it is highly regrettable that this has proved necessary, but all other channels have been exhausted, following the Council's inadequate responses to previous correspondence.

Please note the above reference and ensure all future correspondence is sent to this firm, quoting the above reference.

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We are writing to you now to try and resolve this matter without Court proceedings being required.

Background

The background of this matter is well known to you. For the purposes of clarity however, we set out the salient details below.

Our client first learned of this proposed indoor trampoline park on 16 March 2017 via an email from Clive Douglas, the Sobell Centre General Manager, who is an employee of Greenwich Leisure Ltd (GLL), who have a contract to run the Council's leisure centres. Along with the lead bookers of four other football groups, our client was informed that approximately half the Sobell Centre sports hall was to be converted into a trampoline park which would entail the removal of all indoor 5-a-side football.

At the request of our client, a meeting was held with James McNulty and Clive Douglas of GLL on 30 March 2017, at which the Council was not present. This meeting was very unsatisfactory and so our client then contacted Noel Headon from the Council's Leisure Department and a meeting was held on 12 April 2017, followed by a further meeting on 25 April 2017.

On 7 May 2017, an email was sent to you requesting that the Council undertake a thorough review of the viability and desirability of the proposal.

On 10 May 2017, a document entitled *'Trampoline Park – Sobell Leisure Centre'* was received from Mark Christodoulou, which confirmed that: *"... the Council made the decision to proceed with GLL's proposed trampoline park at its Executive Meeting at the end of February 2017".*

An 'open letter' was sent to all Islington Councillors on 16 May 2017 by Tamsin Oglesby.

In response to her open letter, on 22 May 2017 you confirmed that: *"The Executive will not be reviewing the decision".*

As referred to below, there has been subsequent correspondence with you since then, particularly relating to the questions asked by our client, Barry Hill and architect James Dunnett at the Islington Council Meeting on 30 June 2017.

Despite however everything that has been said about the significant impact and damage this trampoline proposal is likely to cause, the Council and GLL are seemingly intent on proceeding without conducting a proper, meaningful, public consultation.

The matters being challenged

Pursuant to CPR 54.1(2)(a) our client is challenging the lawfulness of the final decision made by you on 22 May 2017, not to review the Council's unilateral decision that was made with no prior Sobell customer or local resident consultation, to convert half the Sobell sports hall into a trampoline park. Our client's challenge is on two principal bases:

(a) Legitimate expectation of consultation

As evident from our client's petition - https://www.change.org/p/petition-to-save-the-sobell-centre-sports-hall - which at the time of writing has 970 supporters, the proposed development will have a significant impact on a large number of the Council's local residents and Sobell customers who use and benefit from the current sporting facilities. Whilst we accept the number of supporters does not in itself prove that our client and others had a legitimate expectation of consultation, such would be expected in a matter which has such a significant impact on such a large number of individuals.

Additionally, and critically, the failure not to consult goes against GLL's written and verbal promises to do so made at Customer Representative Committee (CRC) meetings in 2016.

Specifically, as highlighted in Barry Hill's e mail to you dated 1 July 2017, the minutes of a Sobell Pre-Meeting held on 5 April 2016 contain at Paragraph 1.14 a statement from the then GLL Sobell General Manager Craig Woodward being: *"Full consultation process will take place once the review of the development has been completed".*

These pre-meeting minutes were then incorporated into the minutes of the subsequent Customer Representative Committee Meeting held on 14 April 2016 at which yourself and Noel Headon were present. The Council thereafter approved these minutes in which this statement was made and the Council therefore is bound by these approved minutes.

The CRC Chairman Dr Godson has also provided the following statement:

"The General Manager for Sobell gave a documented statement to the Sobell Customer Representatives stating that full consultation would take place regarding the proposed trampoline theme park at Sobell. This statement was entered into the Customer Representative Committee minutes of 14 April 2016 as an appendix. All committee members and observers attending this meeting were emailed this document well in advance".

Dr Godson and Barry Hill have also confirmed that verbal assurances that a full prior consultation would take place were also provided by GLL in subsequent CRC meetings. Unfortunately, due to issues regarding the production of accurate and timely minutes by the GLL employee who acted as the minuting secretary, these verbal assurances were not documented.

At no time however has Islington Council expressed to the committee or its Chairman, the view that they distance themselves from the commitment on consultation made both in writing and verbally by GLL during these 2016 CRC meetings.

On this basis, our client relies on the case of Paponette and Others v Attorney General of Trinidad and Tobago [2010] UKPC 32 [2012] 1 AC 12, 3 WLR 219 as well as the doctrine set out in the Judgment of Laws LJ in R (Bhatt Murphy) v Independent Assessor [2009] EWCA Civ 755 which states:

"The power of public authorities to change policy is constrained by the legal duty to be fair (and other constraints which the law imposes). A change of policy which would otherwise be legally unexceptionable may be held unfair by reason of prior action, or inaction, by the authority".

The Council distinctly promised to consult those affected or potentially affected, and it has failed in its duty to do so.

In addition, the Council also has an established practice of consultation in cases such as this. As an example, the Council consulted with the Barnard Park footballers for well over 10 years prior to making the decision to downsize their football pitch.

We have been provided with a copy of your most recent e mail dated 17 July 2017 in which you state that: *"After careful consideration, officers, following consultation with me as the Executive member for leisure, decided that it was unnecessary to undertake a public consultation as the trampoline park would be a new facility for residents which would increase usage of the Sports Hall significantly … ".*

Holding no prior consultation at all, in light of the clear and significant impact the development will have on the users of the Sobell as well as local residents, is not only procedurally unfair but in breach of the Council's established practice of consultation and goes against the legitimate expectation of our client.

(b) The Council's failure to comply with Section 149 of the Equality Act 2010.

In your e mail dated 28 June 2017 you state: *"The decision to give GLL approval to proceed with the Sobell Centre trampoline project was issued to GLL on 3rd March, subject to a requirement that they consult on the displacement programme with the users affected and implement any reasonable and practical amendments to that programme to minimise the impact on users so far as was reasonably practicable. This decision was then confirmed on 15 March 2017 by the Head of Greenspace & Leisure under delegated officer authority following consultation with the relevant Executive Member, myself. The principle of the proposal and the funding for the project had previously been approved by full council on 23 February 2017".*

Also in your most recent e mail dated 17 July 2017, you state that GLL on the Council's behalf completed the Resident Impact Assessment for this proposed trampoline project: *"... to which due regard was had when the decision was taken to approve the project. The RIA identified the potential impacts and benefits of the projects for those different groups".*

The critical point here is that the Resident Impact Assessment, that has been provided solely as a result of our client's recent Freedom of Information request, is dated 14 April 2017, it states that the 'date initial screening assessment started' was 24 February 2017, (ie: the day after the full council meeting) and the date this Resident Impact Assessment was signed off by Andrew Bedford (Islington's Principal Parks Manager, Public Realm Division), was only on 23 June 2017.

Further questions are currently being asked of the Council's Public Realm staff to confirm the accuracy of the information they have so far provided, but on the face of the evidence, it would appear that this Resident Impact Assessment was not completed until significantly after 15 March 2017 when we are told the decision was confirmed to GLL, or even after the 'final' decision was made by you on 22 May 2017. If the Resident Impact Assessment had not yet been written, clearly no regard could have been given to it when you took the decision to approve this project.

In any event, notwithstanding when it was actually written, although GLL is supposedly a 'not for profit' company, it nonetheless has a vested financial interest in the proposed development. They have a clear conflict of interest and GLL's completion of this rudimentary Resident Impact Assessment simply does not negate the Council's own duty to hold a public consultation, or undertake its own impact assessment, ideally via an experienced and independent specialist.

The Resident Impact Assessment that GLL have provided also consists of broad assertions and does not contain any factual evidence to back up the assertions contained therein. It lacks: (i) evidence of any consultations with current users; (ii) any data on socio-economic profile of

potential users; (iii) evidence of potential use and associated profile of potential users (one of the main arguments for this trampoline project); (iii) erroneously assumes easy displacement of all 5-a-side football to Holloway School Hall; (iv) provides no assessment as to the impact on the predominantly middle-aged and more elderly indoor 5-a-side footballers who are being 'displaced'; and (v), has no assessment of the impact on local traffic and on-street parking as a result of the projected 150,000 additional Sobell users.

Neither the Council, nor this woefully inadequate Resident Impact Assessment undertaken by GLL, have taken into account the material considerations raised by our client and others, regarding the Council's duty under Section 149 of the Equality Act 2010. Our client believes there has been discrimination in terms of age.

Specifically, there has been absolutely no consideration as to the impact of the proposed 'displacement' on the predominantly elderly (most being 40 years plus) indoor 5-a-side footballers to Holloway School Hall. This alternative venue had nine, 10 cm wide protruding right angled door frames within the playing area. Until our client highlighted this clear danger and GLL paid to make these nine doors flush, this 'suitable alternative' was just too dangerous to play on.

As has also been pointed out by our client, the ultra non-slip, lino covered concrete floor is entirely unsuitable for 5-a-side football, particularly for predominantly elderly players. There has already been a serious injury as a direct result of the non-slip floor, with the player involved having torn her anterior cruciate ligament, partially torn her lateral collateral ligament, torn her meniscus and suffered a fracture.

The only reference however to Holloway School Hall in GLL's Resident Impact Assessment is to assume all indoor 5-a-side football is displaced there, without any consideration as to whether it is an appropriate, let alone safe, venue.

To also justify not holding a public consultation, you rely on the fact that GLL held four open public sessions and three football user group meetings. As our client has made clear on numerous occasions, these meetings were only held after the decision had been made rather than as part of any prior consultation.

The four open public sessions were also never properly advertised. Our client is advised that a pile of A4 information sheets were merely left in the reception area (not even pinned up), advising of four dates and times allocated for *"information events"*. One of the 5-a-side footballers happened to

be at the Sobell on a Friday morning when one of these "information events" was held, but most Sobell customers that could have been potentially interested, were obviously at work. He was the only non-GLL person in the meeting. The three football user group meetings with GLL, (two attended by the Council), were instigated by our client.

What action we require

Our client requires that the Council agree to conduct a proper, meaningful, public consultation on the proposal to develop a trampoline park at the Sobell Leisure Centre. This would result in halting the project until the consultation had been completed.

Pending the outcome of the consultation, if the trampoline park is to proceed in the face of significant public disapproval, our client, as well as the individuals who have signed the petition, seek the Council's agreement to make a provision for indoor football facilities to remain in the redeveloped sports hall.

Alternative Dispute Resolution

Our client is willing to try and resolve this matter without the need to issue Court proceedings for judicial review. If however your decision is to press on and commence the substantive building works as from 31 July 2017, our instructions are to issue an injunction against the Council prohibiting the commencement of any work until a lawful public consultation has taken place.

To try and resolve maters, my client and the core steering group are willing to attend an all parties meeting at the Council's offices. This should take place as soon as possible and certainly before any serious damage is caused by GLL's contractor to the Olympic legacy, 'Gransprung' timber floor, (by screwing a layer of WPC hardboard on top, which is GLL's definition of a *"timber floating floor"*), or GLL's contractor begins cutting out the proposed 6.5 metres of the patterned, first floor concrete parapet wall (as to reinstate with matching concrete will be virtually impossible).

Our client therefore requires your confirmation by 4 pm on Thursday 27 July 2017 that the work will be halted and for an all parties meeting to be arranged shortly thereafter. If no response is received, we expect to receive instructions to issue Court proceedings, which may include an application for injunctive relief. If such action is required, our client will seek an order for his costs from the Council.

Finally, our client intends to release this formal Letter Before Action, as well as all supporting e mails and documents to the press and post them on the petition website. Sobell customers and other Islington residents can then judge for themselves as to whether the Council should have properly conducted a prior public consultation on this trampoline park proposal, that in taking up half the Sobell sports hall will have a significant impact on Sobell users and local residents.

A copy of this letter has been sent to Mark Sesnan, Managing Director of GLL and Mark Christodoulou, Islington Council's Head of Leisure.

We look forward to hearing from you.

Yours faithfully

Freeths LLP