Neutral Citation Number: [2024] EWHC 3284 (Ch)

Case No: CH-2023-000242

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

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

Date: 18/12/2024

Before :

Mr Justice Adam Johnson

- -

Between :

(1) Hawkwell House Hotel Limited
(2) Obbligato Hotels Limited **Appellants**

- and -

(1) Fernanda Pirie
(2) Edward Nicholas Raymond Stargardt **Respondents**

- -
- -

Mr Benjamin Faulkner (instructed by **MemeryCrystal**) for the **Appellants**
The **Respondents** appeared in person

Hearing dates: 22 November 2024

- -

Approved Judgment

This judgment was handed down remotely at 11.30am on Wednesday 18 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE ADAM JOHNSON

Mr Justice Adam Johnson :

The Proceedings Below

1. The Appellants operate a hotel ("*the Hotel*") and the Respondents, Professor Pirie and Professor Stargardt, own the neighbouring property ("*the Priory*"). Their dispute is about a wall ("*the Wall*") which separates them. At some point in about November 2019, an initial section of the Wall collapsed (referred to as "*Section 1*"). Urgent repairs were carried out at a cost of £15,600 plus VAT, but fearing further problems, the Respondents commenced a claim in the County Court at Oxford.

2. At the end of a 3 day trial HHJ Melissa Clarke held that the Appellants were guilty of nuisance: the nature of the nuisance being their having allowed a build-up of earth on their side of the Wall, to a height which rendered the Wall unstable on the Respondents' side. The Judge found that the Wall was not designed as a retaining wall, and so the build-up of earth made the Wall unsafe.

3. The Judge then had to decide on the appropriate remedy. This appeal is concerned with that aspect of her decision.

4. In her Judgment, the Judge identified two alternative solutions which the parties have come to refer to as the "*Garden Wall Solution*" and the "*Retaining Wall Solution*" respectively. The essential difference between them concerns the treatment of the built-up earth on the Hotel side of the Wall. The Garden Wall Solution involves the earth on the Hotel side being removed ("*battered back*") permanently – i.e., the idea is that the earth will be removed and kept at a level of no more than 1 metre from the base of the Wall, thus alleviating pressure on the Wall, and allowing it to be rebuilt in a stable manner. It will still need an element of reinforcing, but that will be limited.

5. On the other hand, under the Retaining Wall Solution, although the earth on the Hotel side of the Wall would be removed to allow rebuilding and reinforcement work to carried out, that would only be temporary; the earth would then be reinstated (backfilled) to its original height, with the Wall being very substantially reinforced and reconstructed to act specifically as a retaining wall.

6. The procedural position before the Judge, so far as relevant to these issues, was as follows. The Appellants had not served any Defence. They had left the Claimants (now Respondents), Professor Pirie and Professor Stargardt, to prove their case. They had though provided a letter from a director, Mr Singhpathom, dated 9 February 2023, in which Mr Singhpathom said that the Hotel had been advised against lowering the soil levels on the Hotel side. That spoke against the *Garden Wall Solution*.

7. As to such advice, the Appellants had in evidence a letter from a Mr Moorey, a contractor from a company called FDUK, dated 10 November 2022. His letter pointed out a number of potential "*challenges*" to achieving the Garden Wall Solution, each in one way or another arising from the fact that the Garden Wall Solution involves the earth on the Hotel side of the Wall being permanently battered back. The issues are: (1) there are tree preservation orders on trees along the boundary with the Priory; (2) lowering the ground level on the Hotel side might cause problems with stormwater runoff and lead to flooding on the Hotel's land; and (3)

lowering of the ground level on the Hotel side will affect existing structures and roadways on that side, and require remedial works.

8. Mr Moorey's letter was not expert evidence: it was not a report compliant with Part 35 of the CPR. Neither did Mr Moorey give evidence at trial. However, both sides relied on expert evidence from structural engineers, and when the Respondents' expert engineer, Mr Wallbank, gave evidence in chief, Professor Pirie asked him about the points made in Mr Moorey's letter. I should say that the first point (concerning tree preservation orders) is no longer pressed by the Appellants as a matter of concern, but dealing with the second and third points, Mr Wallbank thought Mr Moorey's concerns exaggerated. Dealing with the question of rainwater runoff, Mr Wallbank said:

> " *... if the ground were left flat, rainwater would land on the ground and just generally percolate through. The same would happen on a battered back slope, but it would then make -- depending on the compaction, it may direct water to the back of the wall more quickly than it would otherwise do. And that could be a concern. But with rainwater collection - a perforated drain or something like that that would collect that access water could take it away from the back of the wall. And the hotel's responsibility to discharge their own water would be taking appropriate measures to do that*."

9. And as to the issue about existing structures, Mr Wallbank said:

> " *... if there are structures immediately behind the retaining wall on the hotel side and the ground was battered back, I can see that there could be a considered loss of support to buildings and roadway. The battering back distance may be over 2 metres, something like that, with a slope of about 30 degrees and no more than 45 degrees. And that could be considered as instability. But no ground investigation has taken place to verify that and see what probably actually is back there, to see whether that is a realistic problem or not…. if there was instability of the ground, it would not be unreasonable to put in a little toe to the side of the top of the bank next to the roadway, where the roadway exists, with a kerb to withhold that. It is not an impossibility to get over it in terms of a civil engineering solution*."

10. As to the costs of the competing solutions, Mr Moorey did not give any figures for the Garden Wall Solution, but he estimated the costs of the Retaining Wall Solution at approximately £125,000 plus VAT.

11. The Respondents meanwhile relied on figures from a Quantity Surveyor, a Mr Hamilton-Irvine. His figures were: (1) Garden Wall Solution - approximately £152,700 plus VAT, and (2) Retaining Wall Solution - approximately £205,700 plus VAT. Mr Hamilton-Irvine also thought it would cost an additional £10,000 to complete the exercise of battering back the earth on the Hotel side.

The Judge's Decision on the Competing Alternatives

12. The Judge set out the competing alternatives in her judgment at [67] and [68]. She said as follows:

> "*67 ... Really the two options which remain, I think, as realistic options are the defendants' battening back the ground in the way sought by the injunction and the wall being rebuilt along its length like-for-like to the original wall, which would be sufficient to hold back the metre or so of land on the defendants' side.*
>
> *68. The alternative is rebuilding the wall along its entire length as a retaining wall and so no battening back required, and that would negate the need for an injunction. As I say, I have work by the quantity surveyor, Mr. Hamilton-Irvine, and that sets out pretty clearly the differences in costs relating to those two and the retaining wall is very much more expensive*."

13. The Judge chose the first option – i.e., the Garden Wall Solution. At [70] the Judge set out her conclusion:

> "*In this case, Professor Pirie makes submissions that damages is not an adequate remedy. The work would be very much more difficult, more dangerous, much more expensive, arguably disproportionate in expense, if the land was not battered back on the defendants' side. She makes further submissions about maintaining that artificially high level of ground just on the other side of the wall and what that means in terms of health and safety, etc., for those on the defendants' side. On the balance of probabilities, and in the absence of really any assistance from the defendants here -- I do not have any evidence of their view of the work that is being sought or the injunction -- but it does seem to me that an injunction is the just and convenient solution that will make the rebuilding works much more cost effective but also simpler and ultimately, I think, probably more effective in achieving a long-term sustainable, safe boundary between the two properties. I am doing the best that I can on the evidence before me in reaching that conclusion*".

14. I think it clear that in referring in her paragraph [70] to an injunction, what the Judge was referring to was an injunction requiring the Hotel to batter back the earth on the Hotel side and to keep it there, at a reduced height. That is what the Garden Wall Solution required, in contrast to the Retaining Wall Solution.

The Judge's Order

15. The outcome was reflected in an Order made by the Judge dated 3 November 2023. The overall scheme of the Order falls into 4 parts: (1) the grant of permission to the Respondents to carry out the works necessary for the Garden Wall Solution, as referenced in an attached plan (at Annex B); (2) the grant of an injunction against the Appellants requiring them to batter back the earth on the Hotel side and maintain it at a reduced height; (3) an award of damages to the Respondents, corresponding to the costs of them implementing the Garden Wall Solution; and (4) an award of costs to the Respondents.

16. I must set out the language of the Order, which was as follows:

> **"*IT IS ORDERED THAT*:**
>
> *1. The Claimants be permitted to rebuild the Wall in accordance with the plan attached as Annex B to this Order ("the Works"), such Works to be completed within 12 months of the Defendants' compliance with paragraph 2 (a) below.*
>
> ***THE INJUNCTION***
>
> *2. The Defendants do:*
>
> *(a) Within 60 days of the date of this Order, batter back the earth on the Defendants' Property adjacent to and along the full length of the Wall so that the height immediately behind the Wall is no more than 1m above the base of the Wall (when measured from the Claimants' Property) and slopes back at a 45 degree angle; and*
>
> *(b) maintain the earth thereafter at no more than the height and angle; and*
>
> *(c) permit the Claimants to enter upon the Defendants' Property for the purpose of carrying out the Works with such people and equipment as may reasonably required to excavate foundations, remove spoil and do such other things as are necessary to execute the Works.*
>
> ***DAMAGES***
>
> *[3]. The Defendants shall pay the Claimants the sum of £200,372.79 by way of damages plus £3213.20 being interest at 8% per annum from the date of payment by the Claimant of invoices amounting to £16,387 already incurred, being a total of £203,585.99, by 4pm on 17 November 2023.*
>
> ***COSTS***
>
> *[4]. The Defendants shall pay the Claimants' costs summarily assessed in the sum of £13,348.38*."

The Appeal

17. What the present appeal really comes down to is this. The Appellants would much rather the Judge had chosen her second option – the Retaining Wall Solution – as opposed to the first – the Garden Wall Solution. The Appellants say the Judge had no need to choose the Garden Wall Solution, which subjected them to a mandatory injunction to batter down the earth on their side of the Wall and to keep it there, when there was another viable option open to the Judge which did not require such an invasive form of injunction, which she could have chosen instead.

18. The Appellant makes a number of points. The most important are as follows:

    i) No mandatory injunction was necessary because damages were an adequate remedy for the Respondents: if the Retaining Wall Solution had been selected, no mandatory injunction would have been required at all, and the Respondents would have been adequately compensated by the award of damages to reflect the cost of building a retaining wall.

    ii) The Judge was wrong in giving her reasons at para. [70] of her Judgment to say that there had been an "*absence of really any assistance from the defendants*" on the question of remedy: she had the letter from Mr Singhpathom of 9 February 2023 saying that the Hotel had been advised against lowering the soil levels on their side of the Wall, and Mr Moorey's letter which pointed to some specific issues with doing so. The Appellants had therefore made it clear which solution they preferred. The Judge did not consider Mr Moorey's objections in reaching her conclusion.

    iii) The Judge was wrong to proceed on the basis that the Retaining Wall Solution would be that much more expensive than the Garden Wall Solution. This follows from the fact that Mr Hamilton-Irvine's figures for the Retaining Wall Solution (approximately £205,700 plus VAT) were obviously very high. The actual costs of repairing Section 1 of the Wall on an urgent basis following its collapse in November 2019 were only about £15,600 plus VAT. The repair used the same basic technique as the Retaining Wall Solution. If one extrapolates that same cost along the entire length of the Wall, the figure is only about £176,800 plus VAT. That is much less than Mr Hamilton-Irvine's estimate. Moreover, that original work had to be done at short notice, and so the costs are likely to have been higher than for work which is planned and scheduled in advance. Once such matters are taken into account, one is likely to arrive at a figure for the Retaining Wall Solution which is not too far away from Mr Moorey's estimate for that work, i.e., £125,700 plus VAT. Such costs compare favourably to Mr Hamilton-Irvine's figure for the costs of the Garden Wall Solution (£152,700 plus VAT), especially if one has to add on to that another £10,000 – and perhaps more – for the cost of permanently battering back the earth on the Hotel side, which is the central feature of the Garden Wall Solution.

    iv) The injunction granted by the Judge is unduly onerous, in requiring the earth on the Hotel side to maintained at a reduced height (not more than 1m from the base of the Wall) and at a specified angle (45 degrees, sloping upwards from the Wall), in perpetuity. It is also uncertain in that no consideration was given as to whether the injunction will bind successors in title to the land.

v) The Judge's Order was in any event internally inconsistent, because the "*Works*" authorised by para. 1 and described in the plan at Annex B showed the earth on the Hotel side being retained *at the full height of the Wall* on the Hotel side, and if that is what is contemplated, it will be impossible for the Appellants to comply with the mandatory injunction in para. 2(b), which requires them to maintain the earth at a height of no more than 1m from the base of the Wall. To put it another way, if the Respondents carry out *the Works* as authorised, that will immediately result in the Hotel being in breach of the injunction in para. 2.

vi) If the Judge was right to prefer the Garden Wall Solution, she awarded damages at too high a level.

Discussion and Conclusions

19. Subject to the points made below in paragraphs [42] to [43], I have come to the conclusion that the appeal must be dismissed. My reasons are as follows.

20. To begin with, I reject the Appellants' primary submission that damages would be an adequate remedy.

21. By the time the Judge came to consider the question of remedy, the Respondents had already established that the Appellants were guilty of nuisance. There is no appeal against that aspect of her decision. In Lawrence v. Fen Tigers Ltd [2014] UKSC 13, [2014] AC 822, Lord Neuberger said:

> "*Where a claimant has established that the defendant's activities constitute a nuisance, prima facie the remedy to which she is entitled (in addition to damages for past nuisance) is an injunction to restrain the defendant from committing such nuisance in the future; of course, the precise form of any injunction will depend very much on the facts of the particular case*."

22. As Lord Neuberger went on to say, that is subject to the power to award damages instead of an injunction in any case. But as to that (per Lord Neuberger at [120]:

> "*The court's power to award damages in lieu of an injunction involves a classic exercise of discretion...* ".

23. In the present case it seems to me that the Judge was fully entitled to hold that an injunction was justified; and insofar as she was asked to make an award of damages instead, she was entitled to refuse to do so in the exercise of her discretion.

24. Consistent with authority, once the Judge had determined there was a nuisance, she was entitled to say that an injunction was needed to stop it continuing. To be fair to the Appellants, I did not understand them to challenge that basic proposition. On examination, their point was rather less about the need for *some* form of injunction, than about the precise form of injunction the Judge ordered.

25. I say that because even the Retaining Wall Solution requires works to be carried out on the Hotel side of the Wall – i.e., the temporary removal of the earth from its

present level, and the rebuilding of the Wall including its foundations. Some type of order going beyond a mere award of damages (for example, permitting the Respondents to enter on the Hotel side in order to carry our works, or requiring the Appellants to do it themselves) will be necessary to allow that to happen.

26. As I see it, the Appellants' objection is really about the mandatory aspect of the Order which requires them not only to dig out (batter back) the earth on the Hotel side to a level of no more than 1 metre from the base of the Wall, but also (para. 2(b)) to keep it there, and sloping back – upwards towards the Hotel at the top of the slope – at an angle of 45 degrees.

27. In my opinion, though, the form of injunction was a matter for the Judge. As Lord Neuberger made clear in Lawrence v. Fen Tigers, determining the form of injunction required to address the particular nuisance in question is a fact sensitive inquiry. In my opinion, what one sees the Judge doing in para. [70] of her Judgment (quoted at [13]) above) is conducting just the sort of inquiry Lord Neuberger had in mind: she is balancing the relevant factors and seeking to assess, on the evidence before her, how best to respond.

28. I think it wrong to say that the Judge did not give proper consideration to the Appellants' letter from Mr Singhpathom or to the points in the letter from Mr Moorey. Both were in evidence; the Moorey letter had specifically been the subject of testimony from the Respondents' expert Mr Wallbank (see above at [8] and [9]); and it was then also the subject of specific submissions by Professor Pirie in closing the Respondents' case, whose basic point was that although the Garden Wall Solution presented challenges, they were challenges which could be overcome (which was what Mr Wallbank had said).

29. Later in closing submissions, the Appellants' counsel Mr Wood was asked what the Appellants would prefer, if there was a finding of liability against them. Mr Wood said that he would need to take instructions, although he then went on to say:

> "*Their [the Appellants'] position is that any mandatory injunction should be the least attractive of all of the solutions because of the difficulties that could flow from that which Mr Moorey has alluded to*."

30. This, then, was the position on the evidence which the Judge was addressing in her paragraph [70]. That being so, I think the Appellants' overplay their criticism of her. In saying that there was "*an absence of really any assistance from the defendants [i.e., the Appellants] here*", I think she was simply using a shorthand and saying that the points made by Mr Moorey in his letter were too embryonic to be persuasive, and especially so in light of Mr Wallbank's evidence which was that any problems could be overcome. I accept that the Judge's reasoning was expressed in a rather compressed form; but hers was an oral judgment delivered straight after a trial in the County Court, and due allowance has to be made for the fact that the exigencies and demands of Courtroom life do not always permit every point canvassed in argument or in the evidence to be addressed in detail. That is not what is required. All that is required is that the Judge give sufficient reasons for the decision made; and it seems to me that here, the reasons were entirely adequate given the context. The Judge's conclusion, shortly expressed, was that the objections taken on the Appellants' side

against the Garden Wall Solution, were not enough to tip the balance against the points made by the Respondents in favour of it. I think that balancing exercise is what was signalled by the Judge in para. [70] when she referred to "*the balance of probabilities*", and certainly the way she expressed her overall conclusion in the same paragraph was by way of setting out the benefits of the Garden Wall Solution which caused her to prefer it:

> " *... it does seem to me that an injunction is the just and convenient solution that will make the rebuilding works much more cost effective but also simpler and ultimately, I think, probably more effective in achieving a long-term sustainable, safe boundary between the two properties. I am doing the best that I can on the evidence before me in reaching that conclusion*."

31. On the face of it, I see nothing wrong with that as an exercise of judicial discretion.

32. It is well established that an exercise of discretion may be challenged where the decision maker has taken into account some matter that should not have been taken into account. As noted above, the Appellants say there is such a matter here, because the Judge wrongly assumed – and adopted as part of her reasoning – the idea that the Retaining Wall Solution would be more expensive than the Garden Wall Solution. I think it clear that the Judge did have this point in mind in her reasoning, because she said so at para. [68] *("... the retaining wall is very much more expensive*".) Was she wrong about that?

33. As it seems to me, this is really a point about the way the Judge evaluated the evidence. To succeed on such a point, it is not enough to show that another Judge might have evaluated the evidence differently; it is necessary to show that the decision was one that no reasonable Judge could have come to. I have summarised above the arguments made by Mr Faulkner for the Appellants (see at [17(iii)]). It is not clear to me whether those arguments (or others like them) were made in the proceedings below, but even if they were, in my opinion the Judge was fully entitled to conclude on the facts that the Retaining Wall Solution would be the more expensive option. I think there are two related points.

34. The first is that the Judge was entitled to rely on the assessment of Mr Hamilton-Irvine, a Quantity Surveyor – i.e., a person whose professional role is based around accurately assessing the likely scope of building works and estimating the associated costs. The competing figures came from Mr Moorey who is not a quantity surveyor but a building contractor.

35. Second, the Judge's real point was about the comparative costs of the Retaining Wall Solution and the Garden Wall Solution, and Mr Moorey did not put forward any figures for the Garden Wall Solution (which the Appellants did not want), only objections to it. Mr Moorey only put forward figures for the Retaining Wall Solution, but as Professor Pirie pointed out, those figures assumed that the relevant work would be carried out with access *from the Hotel side*, rather from the Priory side, so it is actually rather difficult to compare them directly to Mr Hamilton-Irvine's figures, which assumed access *from the Priory side* (which is likely to be more expensive).

36. Thus, the only direct and reliable comparison available to the Judge was between the two sets of figures put forward by Mr Hamilton-Irvine, i.e., his £205,700 plus VAT for the Retaining Wall Solution, and £152,700 plus VAT for the Garden Wall Solution. Those data points provided reliable points of comparison because (i) they were costed by a professional, and (ii) they were prepared using the same basic assumption about access. Given that, there was ample evidence for the Judge to conclude that the Retaining Wall Solution was likely to cost more than the Garden Wall Solution, and to exercise her discretion on that basis. That is just what she did, as one can see from para. [68] of her Judgment where she said expressly that her conclusion was based on the two sets of figures presented by Mr Hamilton-Irvine, "*I have work by the quantity surveyor, Mr Hamilton-Irvine, and that sets out pretty clearly the differences in costs relating to those two ...*".

37. I therefore think the Judge was justified in taking into account the perceived higher cost of the Retaining Wall Solution, even if those costs would ultimately be borne by the Appellants, who were saying the Retaining Wall Solution was the one they wanted. They were clearly not indifferent about the cost involved, as one can see from the fact that part of their case on this appeal is that Mr Hamilton-Irvine's figures were too high, and so although they would like the Order varied to provide for the Retaining Wall Solution they should have to pay less for it than he estimated. That reinforces the view that the Judge was right to consider cost a relevant factor in the exercise of her discretion.

38. Moving on to the Appellants' remaining points, neither am I persuaded that the injunction ordered is unduly onerous or uncertain as to its effects on third parties.

39. The question whether an injunction imposes obligations which are unduly onerous is again a matter going to the proper exercise of discretion. Here, the Judge was balancing competing interests: on the one hand, the Hotel's interest in having free use of the land on its side of the Wall; and on the other hand, the Respondents' interest in bringing to an end the ongoing effects of the Appellants' nuisance. The question of onerousness has to be looked at in that context, and the fact is that over time the earth on the Hotel side of the wall had been permitted to build up to an unnatural and dangerous level. That was the nature of the nuisance the Judge found to exist, and it had already caused the Section 1 collapse. That being so, I agree with Professor Pirie's submission that there is nothing unduly onerous in requiring the Appellants, once the earth on their side of the Wall has been reduced to a more acceptable level, to refrain from causing any further build-up in a manner likely to cause yet another nuisance. That is a rational response to the nature of the nuisance found.

40. The Appellants' point about onerousness was to some extent bound up with their submissions about the comparative expense of the Garden Wall Solution and about the disruption and difficulty likely to be caused by it. I have already dealt with those points above: the Judge was entitled to conclude on the evidence that the Garden Wall Solution would likely cost less, not more, than the alternative; and entitled to conclude that any difficulties could be overcome (Mr Moorey himself only said that the Garden Wall Solution had certain "*difficulties to achieve*" – he did not say they were insurmountable).

41. The further point about the effect of the Order on third parties was developed only briefly, and not pressed. The Order is a personal one, directed to the Appellants. It

does not, by its terms, directly bind anyone else (although of course third parties who assist in a breach by the Appellants may be held in contempt). What problems that may or may not cause in respect of any future sale of the Hotel was not addressed in any detail in submissions, and such embryonic concerns do not in my view provide a basis for setting aside the Judge's Order, all other things being equal.

42. There is also however the point that there is an apparent mismatch in the Order between (1) the "*Works*" authorised by para. 1 and described in the plan at Annex B (which shows the earth on the Hotel side being retained *at the full height of the Wall* on the Hotel side), and (2) the mandatory injunction in para. 2(b), which requires the Appellants to maintain the earth on the Hotel side at a height *of no more than 1m* from the base of the Wall.

43. This is plainly a problem, but I think is easily rectified. The difficulty arises because, as the Respondents accept, the Plan at Annex B is a somewhat crude representation of the *Works* required to achieve the Garden Wall Solution. The depiction of the intended structure on the *Hotel side* is indicative only, in the sense that it is designed to illustrate the basic form of the required Works (an infilled section of earth surrounded by a geotextile membrane), but not to reflect the precise terms of the Order made. I am satisfied on the basis of the parties' representations that the Works anticipated to implement the Garden Wall Solution *are* achievable in a manner compatible with the injunction in para. 2 of the Order. The answer is for the Order to be varied appropriately, preferably by means of substitution of a replacement Annex B. I will invite the parties to agree the terms of an appropriate amendment. (As discussed at the hearing, the Order should also be varied appropriately to reflect the fact that remedial works to Section 1 have already been carried out. I did not understand that to be controversial.)

44. Finally, Mr Faulkner submitted that if the Judge was correct to prefer to Garden Wall Solution, her award of damages was too high. This point was not really developed, however, and I think rightly so. In assessing damages the Judge relied on Mr Hamilton-Irvine's estimate and was fully entitled to do so, not least because Mr Moorey had not put forward any rival figures for the Garden Wall Solution.

Conclusion

45. For the reasons given above, the appeal is dismissed.

46. I should say finally, though, that it was apparent in the course of the hearing before me that the parties were still involved in discussions, with a view to trying to agree some mutually acceptable solution. I would not wish to discourage that. One aspect involved the Appellants' offer, in lieu of the damages payment under the Order to fund the required Works by a third party contractor, to carry out some or all of the Works themselves. If the Respondents are content with such an arrangement, the Court will certainly not stand in the way of it. But at this stage, it should be for the Respondents to agree to it if they wish, rather than for the Court to impose it on them.