

1. Made on behalf of the Claimant
2. Rauf Iqbal
3. Statement No. 1
4. Exhibits: R11
5. Dated: 7 May 2024

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Claim No. KB-2024-001199

IN THE MATTER OF SECTION 222 LOCAL GOVERNMENT ACT 1972

BETWEEN

**THE MAYOR & BURGESSES OF
THE LONDON BOROUGH OF ENFIELD**

Claimant

-and-

- (1) CHARLES SNELL
- (2) DAVID SNELL
- (3) STEPHEN MAY
- (4) ABDELLAH TAYEB (AKA CASTRO)
- (5) MICHAEL WUJECK
- (6) PERSONS UNKNOWN

Defendants

**WITNESS STATEMENT
OF RAUF IQBAL**

I, **RAUF IQBAL** of the London Borough of Enfield, Civic Centre, Silver Street, Enfield, EN1 3XA **WILL SAY AS FOLLOWS:**

1. I make this Witness Statement in support of the Claimant's Part 8 Claim seeking injunctive relief but also in support of an application for an interlocutory interim injunction in the terms of the Draft Order against the Defendants and in particular

to address the questions concerning a compensation event notification and “penalties” as queried in the Draft Judgement, paragraphs 37 to 39.

2. I would also like to clarify that there was no intention whatsoever to mislead the court concerning the figures of £142,000 quoted in Ms Karen Maguire’s Witness Statement of 18 April 2024. These figures were provided by my team for Ms Maguire’s statement as an estimate of the projected weekly costs. The complex nature of the NEC4 contract is not within Ms Maguire’s knowledge or experience but was at the time an attempt to convey the outline of the matter in layman’s terms. I will address the compensation event issues within this statement. Please note that the compensation event does not refer to penalties but rather compensation.
3. I exhibit to this witness statement a paginated exhibit bundle marked ‘RI1’, and references to the page number(s) herein are to page numbers within the exhibit bundle RI1. Where I do not have direct knowledge of the facts related in this witness statement, I indicate the source of my knowledge.
4. I am the Strategic Infrastructure Works (SIW) Construction Programme Manager and have been in post in Enfield since 11 October 2023. My role is to provide oversight of delivery and technical matters and the interface between the Council’s construction partner, Vinci Construction UK Ltd (Vinci) who operate through Taylor Woodrow (TW) which is wholly owned by Vinci. I am involved in the Meridian Water Regeneration Project Site (“Meridian Water”) which is the Claimant’s flagship development project, located next to the Lea Valley Regional Park with a gross development value of £6bn, Meridian Water will see 10,000 new homes and thousands of jobs. In my role I am responsible for delivery of the SIW Construction Programme which is £195m civil engineering scheme funded by government to provide roads, bridges, utilities and land remediation that will enable the Meridian Water housing developments to be built.
5. The SIW Construction Programme has been granted to Vinci under an Amended New Engineering Contract Version 4 Option A Contract which is dated 6 December 2023, and this is also the start date in relation to the works under it

[1-2] subject to some phased works to which I refer below. The Council has also contracted with AECOM [3] who act as expert contract and cost consultants in relation to the SIW Construction Programme. The Amended New Engineering Contract Version 4 Option A dated 6 December 2023 is subject to the overarching standard NEC contract clauses; the overarching contract is the NEC4 Engineering and Construction Contract (Option A) (NEC4 ECC); these are collectively referred to herein as the NEC4 Contract. Please note that TW is the Council's main contact in relation to the works which is wholly owned by Vinci, and I will refer to TW as the Council's main contact under the NEC4 Contract. Option A is a "design and build" contract where the contractor, TW, is responsible for both designing and building the works. The contract follows a set of guiding principles that are common throughout all NEC4 Contract option variants. The NEC4 Contract is a commercially sensitive and confidential document and as such I will only refer to specific element of it and the relevant parts have been extracted from the contract for the purpose of this Application and Claim to recover possession of the embankment and Rive Lee Navigation System to enable works to progress. There is also an extract of a government contract, namely, a Housing Infrastructure Fund Grant Determination Agreement (GDA) which overarches the Merdian Water regeneration site between the Secretary of State for Levelling Up, Housing and Communities and the London Borough of Enfield of 30 October 2020; this is a highly confidential commercial contract with the government which is not for wider disclosure due the nature of the contract. Accordingly, I respectively request these documents are afforded confidentiality within the Application and Claim for the Injunction.

6. As mentioned, the start date of the Amended New Engineering Contract Version 4 Option A Contract was 6 December 2023 and access was given to TW of the wider site on this date and there are a number of sites within it which were subject to handover through phased timing whereby the Council is obliged to provide access to various areas of the site by given dates for particular phases of works under it. With regard to access to the canal embankment and River Lee Navigation System which is currently occupied in part by the trespassers the crucial date for access for works the canal embankment cited in Schedule One Contract Data Part One at Clause 3 of the Amended New Engineering Contract

Version 4 Option A Contract **[4]** was 28 February 2024 **[5, 8, 11]** as evidenced in the site working boundary **[9, 12]** and more particularly on the canal strip plan which states “all other pink land – the starting date” i.e. 6th December 2023” **[5, 10, 11]**. This is essentially the strip of land at the canal embankment along the River Lee Navigation System and aspects of the River Lee Navigation System which are held by the Council as set out in Karen Maguire’s Witness Statement dated 18 April 2024 at paragraphs 8(i), (ii) and (iv); namely Titles: AGL536977 (the Canal [Embankment] Strip Land), AGL536978 (Lease of Airspace), AGL216617 (Ikea Clear Site).

7. Clauses 6 of the Amended New Engineering Contract Version 4 Option A Contract sets out the Compensation Event and shows engineering percentage at 50% **[6, 13]** and X7 sets out and the delay damages of the whole works at £81,000 **[7]**. What constitutes a compensation event is more particularly defined at Clause 60 of the NEC4 ECC; the Council’s expert contract and cost consultants AECOM have prepared a detailed response with regard to the mechanics of the NEC4 Contract concerning the embankment and Canal Wall and Failure to Provide Access and how delays are dealt with and calculated. As can be seen Clause 60 NEC4 ECC provides that a failure to provide access on the access date triggers a Compensation Event **[13]** and Clause 63 of the NEC4 ECC sets out the Assessment for Compensation Events **[13]** which comprises Actual Defined Costs, Forecast Defined Costs and Resulting Fee **[13]**. It should be noted that Defined Cost Clause pursuant to 11.1 of the NEC4 ECC **[13]** is the cost of the components set out in the Short Schedule of Costs Components **[17-20]**.
8. In summary, the principle is that the NEC4 Contract defines what constitutes a Compensation Event and it captures delays to the agreed completion date as outlined at Clause 63.5 of the NEC4 ECC **[14]**.
9. A Compensation Event has been triggered as the Council has failed to fully provide access for the canal wall preliminary works to the embankment as set out in Clause 3 on 28 February 2024 **[5, 8, 11]**. The completion date will be

impacted if the Council cannot gain possession of the Embankment and River Lee Navigation System which it has rights to.

10. The Compensation Event is responded to by assessing the time and cost of delay specific to the activity that causes the delay and changes to the defined costs that are affected. The response to the delay in question is based on a scenario to illustrate the level of risk posed to the Council where it is unable to grant access to TW. TW has raised an Early Warning Notice (EW-15) against this risk noting a potential change to cost and programme on 29 January 2024 **[21.22]**. The Compensation [Event] Notice of 7 March 2024 which is evidenced at **KM1[176]**. This Compensation Event is for changes resulting from partial access to areas not trespassed upon, primarily security and fencing to safeguard the trespassers from entering works areas.
11. There is no correspondence concerning the financial penalties per se; the only documents which have triggered the Compensation Event are as set out herein and in particular at paragraph 10 above. The reason that the form of traditional correspondence does not exist is because the NEC4 Contract is governed by a contractual process hosted on a web-based platform. The physical documents are prepared within that sphere and are transmitted within it. In this case the only documents are the Early Warning Notice (EW-15) **[15, 21-22]** and the Compensation Event CE-04 **[15] & KM1[176]**.
12. A Compensation Event relating to the delay identified by the aforementioned Early Warning Notice cannot yet be fully quantified and will only accurately be known once access to the canal strip of land can be granted. However, estimates are being projected and those were provided to Ms Maguire and submitted in her Witness Statement of 18 April 2024. AECOM have provided further projected costs plan concerning to the Compensation Event (arising due to the delay) in granting access **[13-14]**. As can be seen these projected costs are substantial with Period 1 (monthly) costs projected to be £552,861.20 and increasing month on month at over this monthly figure due to staff costs projection increases.

13. The Council has been working with its partners TW and AECOM with a view to averting this financial risk concerning the Compensation Event. It is recognised by the parties to the NEC4 Contract that it is imperative to work collaboratively with a view to progressing the Strategic Infrastructure Works through open dialogue is used to discuss and avert risk. Presently, the Council have accepted a proposal from the TW to mitigate part of this risk on the following basis:
 - (a) Through additional measures introduced to allow the contractor to access parts of the area to undertake works whilst efforts to vacate the embankment and canal have progressed. Additional costs are attributable to this and are captured in Compensation Event notice **[15] & KM1[176]**.
 - (b) Through the Council taking measures with a view to providing full access including the court application for the injunction with a view to recovering the whole area with vacant possession to facilitate the continuation of the infrastructure works.
14. However, these mitigating steps do not negate the need to ultimately provide access to the Canal Wall which is essential to clear the embankment and river shoreline and to shore up the Canal Wall in readiness for building the bridge across it. TW have advised that they will seek the Compensation Event penalties should access continue to be denied beyond 17 May 2024.
15. The Council is currently at a very high level of risk in failing to meet its contractual obligation posed by the trespassers remaining on the embankment and River Lee Navigation System due to the sensitive time elements within the NEC4 Contract and this poses wider implication to obligations for the council under a government Housing Infrastructure Fund Grant Determination Agreement (GDA) which overarches the Meridian Water regeneration site between the Secretary Of State For Levelling Up, Housing And Communities and the London Borough of Enfield of 30 October 2020.
16. This high level risk escalates if access cannot be secured forthwith, these risks being:

- (a) The Council would be unable to complete the engineering works to the canal wall, (this is the 28 February date referenced at **[5, 6]** in turn we would be unable to build-out Bridge B1 and complete the new spine link road. The Meridian Water Strategic Infrastructure Works Programme outlines the Canal Wall works as Critical Remaining Works.
 - (b) **[23-24]** and it is imperative these works commence forthwith to avoid further delay and the consequences which may ensue from any further delay.
 - (c) Where the NEC4 Contract continues to be delayed this will impact the scope of the GDA which has strict deadlines that the contract must adhere to with Completion of Works set as 31 March 2026 **[25-26]**. Failure to adhere to this time limit would trigger termination of the GDA.
 - (d) If termination of the GDA is triggered the government would then be obliged to recover 100% of the funding granted or payments made to date which are currently in the region of £49,000,000 **[24-28]**.
 - (e) Where the Council is required to repay the funding under the GDA that would have the consequential impact upon its the financial viability as a local authority. This event would lead to a Section 114 notice.
 - (f) The Council would be unable to continue with its flagship Meridian Water development programme to build new homes.
 - (g) The Council would be liable to interested third parties, developers and landowners for breach of agreements for claims of tens of millions of pounds.
 - (h) The Council would incur severe, possibly irrecoverable financial and reputational damage.
17. Finally, I clarify that the fencing has not been sufficiently effective since the Defendants' have breached the fence line on multiple occasions and in multiple locations, straying into other areas of the Meridian Water works site. The breach to the fencing can be seen in Karen Maguire's witness statement bundle at **KM1 265 - 266**. The erection of this additional fencing has costs £21,575 as at 18 March 2024 **[15]**.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Signed: _____

Name: Rauf Iqbal

Dated this 7 May 2024

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EXHIBIT R11
