



Neutral Citation Number: [2015] EWHC 1954 (Ch)

Case No: HC-2014-000132

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
The Rolls Building
Fetter Lane
EC4A 1NL

Date: 08/07/2015

Before :

MR JUSTICE NORRIS

Between :

The London Borough of Tower Hamlets	<u>Claimant</u>
- and -	
The London Borough of Bromley	<u>Defendant</u>
(in its capacity as successor to the London Residuary Body)	

Nigel Giffin QC and Christopher Knight (instructed by **The Legal Services Department** of the London Borough of **Tower Hamlets**) for the Claimant
Timothy Straker QC and Dilpreet Dhanoa (instructed by **Trowers & Hamlins LLP**) for the Defendant

Hearing dates: 15 and 16 April 2015

APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE NORRIS

Mr Justice Norris :

1. In 1957 Henry Moore, reflecting on his wartime experiences of the London Blitz and his war artist drawings, created a sculpture which became known as “Draped Seated Woman”. It is a large bronze figure (weighing 1,500 kgs) sitting upon a stepped plinth, its left arm resting upon the upper level. According to the Henry Moore Foundation at least 6 casts were made. By 1961 these had been placed in Cologne, Brussels, Yale University, USA [see EB2/D/p84], Melbourne and Jerusalem. One remained. On 15 September 1962 this was purchased by the London County Council (“LCC”) and was shortly thereafter placed near three tower blocks on the recently constructed Stifford Estate in Stepney (now in the London Borough of Tower Hamlets). Tower Hamlets has expressed a wish to sell the sculpture to fund local services: but the London Borough of Bromley (as successor to the London Residuary Body) says that Tower Hamlets may not do so and that the sculpture should be kept for the benefit of the people of London. So the question to be determined in this action is: who owns the Henry Moore sculpture?
2. It should be made clear at the outset that this case is about “ownership”. No question of trust law arises. Once ownership is established whichever local authority owns the sculpture may deal with it freely as owner, the rights of ownership being exercised by the relevant constitutional organs of that authority in accordance with whatever democratic direction is given to it.
3. Although the acquisition by the LCC as owner is not in doubt, it is necessary to examine the process of acquisition and the way in which the sculpture came to be located in Stepney because of the influence these matters might have on subsequent events. My findings are based primarily upon surviving documents (and the inferences that may be drawn from them), supplemented by the credible recollection of one of the participants in the relevant events and by the summary conclusions of museum curators and others who have studied LCC policies and activities during the relevant period (which both sides accepted was an available source of admissible material).
4. It is clear (from a statement made by the Leader of the LCC, Sir Isaac Hayward, in November 1954) that by the mid 1950s the LCC took the view that it had both a cultural and educational responsibility to do what it reasonably could to encourage and assist in the provision of works of art: and that it had two means of doing so. First, as is apparent from a Report of the General Purposes Committee of April 1956, the LCC considered that its powers to provide and furnish buildings for various functions included, within the bounds of what was reasonable, an inherent power to provide by way of adornment appropriate and suitable works of art. As the Leader’s 1954 statement had said (according to the 1956 Report):-

“On occasion sculpture and other artistic decorative features have been incorporated in some of the Council’s schools and other buildings and in some of its housing estates as part of the building scheme, and charged to the capital cost of construction”.

Second, the LCC had a specific power under section 157 of the Local Government Act 1939, which provided that:-

“The County Council may acquire, by agreement, any work of art, and may erect and maintain, or contribute towards the provision, erection and maintenance of, any work of art in any place within the county”.

5. In 1956 the General Purposes Committee of the LCC suggested that the Council should earmark annually a sum of money which would be available for the acquisition of works of art for both new and existing buildings and schemes, expressing the view that:-

“we think that there would be further scope for the adornment of schools and housing projects, and for such purposes as to provision of sculpture in the layout of parks, and in the design of bridges, road improvements etc... We envisage that although some existing works of art might be acquired from exhibition galleries and similar sources, the main emphasis would be on the commissioning of new works and the encouragement of living artists... we think that £20,000 a year would be a reasonable sum for the council to set aside for the purposes we have in mind”.

6. That proposal was implemented, and a General Purposes (Special Development and Arts) Sub-committee was formed, assisted by a Patronage of the Arts panel (itself formed with the assistance of the Arts Council). The General Purposes Committee were described (in a later memorandum of 31 July 1963) as “custodians of the Council’s funds for the patronage of the arts”, and the Sub-Committee (and its panel) was sometimes referred to as “The Advisory Body on Art Acquisitions”.
7. A Memorandum circulated in April 1961 provides an insight as to how the system worked. It stated:-

“An Advisory Body on Art Acquisitions has now been set up as a Sub-Committee of the General Purposes Committee to advise the executive committees on proposals to acquire works of art [and] on the choice of artists.... The Education, Housing and Parks Committees are represented on the Advisory Body, and other Committees will be associated with them as necessary. It is intended that the Advisory Body be the means of communication between the Council, the Arts Council, and the artist, and that it should thus relieve the executive committees of the work of interviewing artists and inspecting their work...Approval will be sought each year of a programme of works costing up to £20,000... Proposals... should be forwarded to reach me by October in each year. The proposals should indicate the likely cost...If the site suggested may

subsequently be transferred to another authority, this should be noted. After any necessary consultation with heads of department the Clerk of the Council will prepare a tentative programme and forward to the Director of Art those proposals with which the Arts Council are concerned. The Director of Art will make his arrangements for visits to the site directly with the department concerned... After the Director has advised the Clerk of the Council of his conclusions, and after any necessary further consultation with heads of department initiating the proposals and with the Director, the programme revised as necessary will be submitted to the General Purposes Committee and then, if approved, to the executive committees whose decision should be communicated to the General Purposes Committee... The proposals in the approved programme will be considered by the Advisory Body... The recommendations of the Advisory Body will in each case be the subject of a formal communication to the Executive Committee whose decision (which could normally be taken by Chairman's action) should be forwarded to the General Purposes Committee... All executive action, including communications to vendors and artists, and instructions to the Solicitor will be put in hand by the Clerk of the General Purposes Committee... Provision for expenditure will be made in the General Purposes Committee votes by the Clerk of the General Purposes Committee who will undertake the financial control of the expenditure.....”.

8. A contemporaneous summary of the way that the system was intended to work explains:-

“Each provisional programme of proposals for the ensuing year is prepared by the Clerk of the Council in consultation with the Director of Art and the heads of departments, and its final form is approved by the General Purposes Committee on the recommendation of the Special Development and Arts sub-committee, subject to each of the individual items being acceptable to the service Committees concerned.”

9. The Stifford Estate was built at Clive Street in Stepney and completed in the early part of 1961. The three tower blocks were regarded as a prime example of modern architecture (and were visited by Her Majesty The Queen and the Duke of Edinburgh in July 1962). They were built within their own modest grounds abutting onto Jamaica Street at the front, and separated at the rear from Stepney Green by a sizeable public path. They were designed without reference to the inclusion of any particular piece of art, but from an early stage it was contemplated that a work of art would be commissioned and placed somewhere in relation to the development. This is apparent from the fact that a sum of £2,200 had been allocated out of the budget for the year 1959-1960 for that purpose. It is worthy of note that the exact siting of the proposed work was the cause of some concern: a report (which I place in the first half of 1961) describes the Stifford Estate as “a difficult site” and opines:-

“It would be preferable to site a sculpture near the play space to be created to the North East of the open area around the buildings...It is important here that the sculpture should be divorced as much as possible from the three 17-storey blocks.”

10. As Pat Hardy, curator of paintings, prints and drawings at the Museum of London observed in a study of works of art acquired by the LCC for properties in London:-

“The LCC felt that such new estates should have works of art in them and they set about sourcing and buying art works for these new spaces and also for schools and colleges. This was not for purely aesthetic reasons as they made clear “the Council has no authority to encourage art for art’s sake or to encourage national art except insofar as it benefits London art”. It was part of the policy to improve Londoners’ lives and living standards. The new Stifford Estate was a prestigious site and a suitable prestigious sculpture was therefore required to put in it”.

This led to a revision of the original proposal to commission or acquire a work for £2,200. Henry Moore’s “Three Standing Figures” had already been given to the LCC by the Contemporary Arts Society in 1949. The Art Advisory Body decided to approach Henry Moore to see if he would sell the final cast of “Draped Seated Woman” to the LCC for placement on the Stifford Estate. Sir Alan Bowness CBE (who taught at the Courtauld Institute of Art from 1959 to 1979, was a member of the Arts Council and a member of the LCC Advisory Board at the time of these events, and became during the 1960s a close friend of Henry Moore, catalogue of his sculptures and a Trustee of the Henry Moore Foundation) recounts that:-

“[Henry Moore] was particularly keen that the final cast should remain in the UK and be dedicated to the people of London whose bravery and resilience during and after the war he so admired.”

Henry Moore agreed to sell the sculpture.

11. In consequence, on 9 October 1961 the Minutes of the General Purposes (Special Development and Arts) Sub-Committee record an intention to recommend to the General Purposes Committee:-

“That subject to the approval of the Housing Committee the programmes of patronage of the arts for the years indicated be revised as follows... 1959-1960-Stifford Estate, Stepney – by the acquisition of a cast of “Seated Draped Woman” by Henry Moore at a cost not exceeding £7000 + £400 for incidental expenses (instead of a sculpture at a cost of £2,200)...”

12. Henry Moore confirmed his willingness to sell the sculpture on 4 January 1962 and he was paid for it in September 1962. Accordingly to press reports, the sculpture appears to have been in position in August 1962.

13. It was not warmly received by all. One correspondent to the local paper enquired:-

“What is this? Is this monstrosity supposed to represent Womanhood? Surely there is something wrong with Art when it deliberately sets out to portray a malformed, ill-proportioned wench as a woman. What does the statue, just off Jamaica Street suggest to the passer by? I see on the mound a heap of metal roughly moulded, it is large and it is ugly. I think of the many Stepney Matrons I have the pleasure of knowing. Does this statue do them justice? No!”

The reference to the sculpture being on a “mound” records that the sculpture, on its plinth, was placed on a concrete slab built into a raised grass mound in an open space between two of the three tower blocks adjacent to the play area. A photograph from 1964 shows the sculpture upon the raised grassy mound clearly visible both from Jamaica Street on one side, and from Stepney Green on the other. I should conclude this part of the narrative by noting that once it was in place, the residents christened the sculpture “Old Flo”.

14. It will assist exposition if I now identify and answer two questions:-
- a) Into what legal category is the sculpture to be placed? Is it part of the land? Or is it a chattel?
 - b) In what right did the LCC acquire and hold the sculpture?
15. In my judgment the sculpture, which was originally a chattel, remained a chattel and never formed part of the realty.
16. It is always a question of fact in the individual case whether something has remained a chattel or become a fixture; other cases therefore serve as no more than illustrations of the application of the relevant principles. Conventionally, those principles require the application of two tests: (a) the method and degree of annexation; and, (b) the object and purpose of annexation. Generally, the second of those tests is taken to be the more significant and can enable a Court to decide when an object is a chattel, or is a fixture, or is part and parcel of the land itself. In Elitestone Limited v Morris [1997] 2 All ER 513 at 518j Lord Lloyd noted:-

“Many different tests have been suggested, such as whether the object which has been fixed to the property has been so fixed for the better enjoyment of the object as a chattel, or whether it has been fixed with a view to effecting a permanent improvement of the freehold.”

This, and similar tests are useful when one is considering an object such as a tapestry, which may or may not be fixed to a house so as to become part of the freehold: see Leigh v Taylor [1902] AC 157.

17. Applying the conventional tests and bearing in mind Lord Lloyd's observation, the following considerations are in my judgment material. The sculpture is an entire object in itself. It rested by its own weight upon the ground and could be (and was) removed without damage and without diminishing its inherent beauty. It might adorn or beautify a location, but it was not in any real sense dependant upon that location. It is true that one subsequent commentator on the LCC policy wrote :-

“Occasionally, the sensitive placement of a non-commissioned work resulted in an impressive interaction of art and environment as in Henry Moore's Draped Seated Woman, whose longing gaze scans an expansive lawn”.

But in my view the sculpture's power was no greater in Stepney than in Cologne or Melbourne. The sculpture did not form part of an integral design of the Stifford Estate; and whilst it must have been intended to confer some benefits upon the residents of the Stifford Estate it conferred equal benefits upon anyone passing along Jamaica Street or Stepney Green. Upon an objective consideration of all of the circumstances of the case I conclude that the sculpture remained a chattel. This outcome is consistent with the application of these principles in cases such as D'Eyncourt v Gregory (1866) LR 3 Eq 382 (subject to the criticism in Re de Falbe [1901] 1 Ch 523) and Berkley v Poulett [1977] 1 EGLR 86.

18. As to the second question, I find and hold that the LCC acquired the sculpture in exercise of its function under Patronage of the Arts scheme. As Stephen Richards J (as he then was) pointed out in R v Wrexham County Borough Council ex parte Wall [2000] JPL 32 a single local authority discharges many functions, and must, in the discharge of those functions, point to some statutory power which enables the function to be discharged. As the arrangements which I have outlined above clearly indicate, the LCC bought the statue in discharge of its cultural and educational responsibility to do what it reasonably could to encourage and assist in the provision of works of art, and in doing so expended half the annual sum specifically set aside for those purposes. The LCC recognised that it had two sources of power to do so: and although it did not expressly say which power it was exercising, in my judgment it must have been exercising the power under section 157 of the 1935 Act. The sculpture had not originally been incorporated in the building scheme for the Stifford Estate and (on the evidence) was probably not paid for by means of a charge to the capital cost of constructing the Stifford Estate but out of a separate allocation under the financial control of the General Purposes Committee. It is true that the Housing Executive Committee was involved in the process and was represented on the Special Development and Arts Sub-Committee (or the Advisory Body on Art Acquisitions). But the decisions on expenditure were made by the General Purposes Committee (on the advice of the Advisory Body on Art Acquisitions). The role of the Housing Executive Committee as a whole appears to have been to suggest sites, to comment upon proposed acquisitions or to decline the offer of the provision of a work of art. This is apparent:

- a) From the procedural summaries to which I have referred:

- b) From the very Minute of the resolution to acquire the sculpture which records that it was “agreed” by the General Purposes Committee on the 16 October 1961 and “approved” by the Housing Committee on the 25 October 1961 (as recorded in the Housing Committee Minutes in those terms): and
- c) From an article published in 1977 by Dolores Mitchell entitled “Art Patronage by the London County Council 1948-1965” which is based upon an examination of the Minutes of Proceedings and Debates, which expresses the view that:

“In the program, three groups shared the responsibilities of commission and purchase decisions: LCC architects and officials; the Arts Council...; public housing and other “customer committees” such as those representing sites or estates receiving art works... The public housing, education and other committees could question the suitability of proposed works. They vetoed works they felt would be offensive to, or beyond the understanding of, the people who would see them daily...”

- 19. My finding that upon its installation in August 1962 the sculpture remained a chattel, and my holding that it was acquired by the LCC discharging its function under Patronage of the Arts scheme affects the analysis of what follows.
- 20. In 1964 the Advisory Body asked for a report to be prepared as to the working of the patronage of the arts scheme. The report included “A List of Completed Works Commissioned or Acquired under the Patronage of the Arts Scheme”, being works incorporated into or sited at schools, housing estates and public spaces. The sculpture is recorded on the list. This supports my finding as to the capacity in which the LCC acquired it.
- 21. Under the London Government Act 1963 (“the 1963 Act”), the LCC was abolished with effect from 1 April 1965. On the abolition of the LCC there came into being the Greater London Council (“the GLC”) and the various London Boroughs (including Tower Hamlets and Bromley). It is common ground that the sculpture vested in the GLC, but there is no agreement as to the route by which it did so. There are two possibilities.
- 22. The first is under section 23(1) of the 1963 Act. This subsection provides that:-

“On 1st April 1965 there shall vest in the Greater London Council all land which immediately before that date was held by the London county council for the purposes of their functions as a local authority under the Housing Act 1957”.

By virtue of this provision the Stifford Estate vested in the GLC. The sculpture was a chattel and not “land”. But s.23(5) of the 1963 Act said the references to “land”

“.. shall be construed as including references to any other property held in connection therewith..”.

Tower Hamlets argue that the sculpture was held “in connection with” the Stifford Estate.

23. The second is under the London Authorities (Property etc) Order 1964 SI No. 1964/1464 (“1964 Order”). Shortly put (and reading its general provisions as specifically applicable to this case) this provided that all property and liabilities then vested in the LCC should be transferred to, and vest in, or attach to the GLC. For reasons which will appear later (when I consider very similar provisions in later legislation) I favour this second route.
24. But by whichever route it is common ground that the sculpture vested in the GLC.
25. So it was that in 1982 the GLC’s Director of Recreation and the Arts and the GLC’s Head of Legal Branch presented reports on the topic of “The Council’s Works of Art”, which led to a discussion and a resolution of the General Purposes Committee that no action be taken to prepare a comprehensive list of the works of art, or to seek valuations or to establish a trust.
26. What then occurred was that the Stifford Estate which had vested in the GLC was transferred to Tower Hamlets. This was achieved under the Greater London Council (Transfer of Land and Housing Accommodation) (No.3) Order 1981 SI No. 1981/644 (“the 1981 Order”). According to its preamble, the 1981 Order came into being as a result of a request by Tower Hamlets (made under s.23(3) of the 1963 Act) for the transfer to it on 1 July 1985 of certain housing accommodation held by the GLC. This was described in a deposited Schedule and was called in the 1981 Order “transferred property”. Article 4 of the 1981 Order said:-

“On the relevant date the interest of the [GLC] in the transferred property and.... all liabilities attaching directly or indirectly to the [GLC] in respect of its ownership or occupation of such property shall by virtue of this order be transferred to and vest in or attach to [the Council for the London borough of Tower Hamlets]”.

Article 2(2) of the 1981 Order said that unless the context otherwise required (and without prejudice to the generality of s.23(5) of the 1963 Act) any reference to “housing accommodation” included

“a reference to garages, parking spaces, shops and estate amenities”.

Article 5 of the 1981 Order said that the provisions of section 62 of the Law of Property Act 1925 should have effect in respect of any transferred property.

27. The deposited Schedule included an entry for the Stifford Estate. It made no mention of the sculpture. Tower Hamlets say that the sculpture passed into its ownership:
- a) Because under s.23 of the 1963 Act “land” includes “connected property” and the sculpture is “connected property”; or
 - b) Because the sculpture is an “estate amenity”; or
 - c) Under the provisions of section 62 LPA 1925.
28. Counsel for Tower Hamlets submitted: (a) that what was transferred by the 1981 Order was “the transferred property”; (b) the “transferred property” was “the land” described in the deposited Schedule; (c) in the 1981 Order the term “land” bears the same meaning as in the 1963 Act (either because by virtue of s.11 of the Interpretation Act 1978 expressions used in the empowering legislation generally have the same meaning in the subordinate legislation or because Article 2(2) of the 1981 Order specifically refers to s.23(5) of the 1963 Act and preserves its generality); (d) in the 1981 Order references to “land” include any other property “held in connection therewith”. I accept each of these submissions. Counsel then submitted that the sculpture was held by the GLC “in connection” with the Stifford Estate so it too must have passed to Tower Hamlets. I do not accept this submission.
29. The “connection” on which Tower Hamlets relies is: (a) that the sculpture was bought with the object of displaying it on the Stifford Estate; (b) that specific works were done on the Stifford Estate to accommodate it (the creation of the mound and the building of the concrete slab); (c) by 1 July 1985 the sculpture had been in place for 20 years. Counsel urged that the term “in connection with” is a broad expression (per Arden LJ in Barclays Bank v HMRC [2007] EWCA Civ 442; [2008] STC 476 at paragraph [18]) and of the widest import (per Balcombe LJ in Ashville Investments v Elmer Contractors [1989] QB 488 at 503). They submitted that there was a stable and deliberate linkage between the Stifford Estate and the sculpture which establishes a sufficient connection.
30. Before being beguiled by the breadth of a term such as “in connection with” it is in my view necessary to pay close attention to the context in which it occurs. This was the very point made by Arden LJ in the Barclays Case (*supra*). She said at paragraph [30]:-
- “There is no doubt that the Court should, when interpreting a statutory provision, examine not just that provision but also the context in which it appears in the legislation in question. It may then be able to form a view as to the purpose of the provision in question and that knowledge may inform its thinking as to the choice of meaning to be offered where choices are available. The context of the provision in question, however, will not of itself justify the Court in limiting the provision to that context,

and thus reducing its apparent scope, unless there is some indication in the legislation that this what Parliament intended.”

31. The 1963 Act was concerned to deal with the transfer of land which had been held by the LCC “for the purposes of their functions as a local authority under the Housing Act 1957”: and the onward transfer by the GLC to a London borough had an identical focus. So the underlying concept is “functionality”: what passes is land held for the purposes of an identified function. If personal property “held in connection with” such land is to pass, it too must have some connection with the discharge of the function of a local authority under the Housing Act 1957. If the LCC had held a collection of pictures which from time to time it displayed in the entrances to public offices and blocks of flats as part of its arts education programme it would have held none of them in connection with the discharge of its function as a local authority under the Housing Act 1957. Those pictures hanging in the hallways of blocks of flats would not have passed to the GLC as part of the housing stock (as property held in connection with land used to discharge the council’s housing function), leaving those hanging in offices vested in the LCC. The “function” in connection with which the pictures were held was something other than the function of a local housing authority.
32. In my judgment the sculpture was not property “held in connection” with specifically described land held by the GLC for the purposes of its functions as a local authority under the Housing Act 1957. It was held by the GLC (and had been held by the LCC) in connection with its arts education programme as is evident from the circumstances surrounding its acquisition. The power which authorised the acquisition of the sculpture was s.157 of the Local Government Act 1939, not the Housing Act 1957. The power which authorised the retention of the sculpture was s.84 of (and paragraph 16 of Schedule 2 to) the 1963 Act, not the Housing Act 1957. The money that paid for the sculpture was the specific annual allocation for arts purchases and was not accounted for as a housing cost. The sculpture was sited on the Stifford Estate and no doubt benefited the residents of the Stifford Estate, but it also benefited any member of the public using the path alongside Stepney Green or using Jamaica Street.
33. Counsel for Tower Hamlets submitted that an investigation of the archives to discover the origin of particular items of property (acquired perhaps decades earlier) cannot have been what Parliament intended, and that all the Court is required to do is to look at the position at the transfer date and to enquire whether at that date in some broad sense an item of property was held “in connection” with some land that was itself being then transferred. I am not persuaded by this objection. First, because in respect of important items of property (and they are the only ones that matter) the LCC (and later the GLC) did keep accessible records, as this case shows. Second, the proposed approach would convey too much. For example, no doubt there were at LCC (later GLC) depots various vehicles and items of equipment and stocks of materials held in a broad sense “in connection with” the Stifford Estate in that they were sometimes used for repairs to properties on the Estate (as they were sometimes also used for other repairs); but it does not seem to me that the depots, vehicles and stocks of material were conveyed by the general words of

the 1981 Order even though some of them had some functional connection with the Stifford Estate.

34. Counsel for Tower Hamlets also submitted that my approach takes an unduly restrictive view of the function of a local authority under the Housing Act 1957. They submitted (on the basis of a consideration by the House of Lords in Akumah v Hackney LBC [2005] UKHL 17; [2005] 1 WLR 985 of a council's power to impose parking regulations within an estate in the absence of a specific power to do so) that a local authority's powers of management of housing accommodation should be construed in the widest possible sense and that the LCC's acquisition and retention of the sculpture might be regarded as an exercise of its general powers of management of its housing accommodation within the Housing Act 1957. I do not doubt that the powers of managing housing accommodation are to be interpreted in the manner suggested (though I should not be taken to accept that so read they would authorise the purchase of a work of art). But here there was a specific power to do what the LCC did and sound evidence that they exercised that specific power in doing what they did. The fact that there may have been some other residual power which might have been used to achieve the same end does not assist.
35. So the first suggested route by which the sculpture passed from the GLC to Tower Hamlets (as property "held in connection with" housing accommodation) does not work. Nor, in my judgment does the second.
36. Counsel for Tower Hamlets argued that Article 2(2) of the 1981 Order included within the term "housing accommodation" other property including "estate amenities". They cited Re an Arbitration between Ellis and Ruislip-Northwood UDC [1920] 1 KB 343 as authority for the proposition that the terms can mean "pleasant circumstances or features", and they submit that the sculpture is obviously an estate amenity so it must pass.
37. I do not agree. The 1981 Order cannot transfer any property that could not be transferred under the 1963 Act. Garages, shops and estate amenities are simply a sub-set of such property, not an additional category. Each of them must be held "in connection with" housing accommodation held by the GLC for the purposes of its functions as a local authority under the Housing Act 1957. To take a simple illustration: Stepney Green itself was "a pleasant circumstance or feature" of the Stifford Estate. But it undoubtedly did not pass to Tower Hamlets as part of the housing accommodation transferred under the 1981 Order. Nor would a mobile library that served the estate every week: no doubt an "estate amenity", but not "property" held "in connection" with housing accommodation. On the other hand, barrow sheds, greens, shrub beds and transformer substations (items mentioned on the "Consolidated Administrative List of Property Transferred by the 1981 Order as altered by the Amendment Order 1985 SI 1985/828" prepared by the GLC) clearly did pass.
38. Finally, the third suggested route (using the general words implied by section 62 of the Law of Property Act 1925) does not in my judgment bring the sculpture home to Tower Hamlets. Counsel for Tower Hamlets argued that the sculpture was a "fixture" which appertained or was reputed to appertain to the

Stifford Estate and therefore passed. In my judgment for the reasons given above, the sculpture was not a “fixture” although it had been in place for upwards of 20 years by the time the 1981 Order took effect.

39. I therefore hold that when the housing accommodation which comprised the Stifford Estate passed to Tower Hamlets, the sculpture remained vested in the GLC.
40. In its turn the GLC was abolished on the 1 April 1986. This occurred by virtue of s.1 of the Local Government Act 1985 (“the 1985 Act”). Counsel for Bromley argued that under section 62 of the 1985 Act there vested in the appropriate residuary body all residuary property of the GLC, and for that purpose “residuary property” meant any property for the vesting of which provision was not otherwise made under the 1985 Act or any other enactment. Counsel for Tower Hamlets argued that as regards the sculpture provision was “otherwise made” by article 3 of the Local Government Reorganisation (Property etc) Order 1986 SI No. 1986/148 (“the 1986 Order”). But the parts of the 1986 Order on which they rely relate to the vesting of “land” held by the GLC as a local authority under Part V of the Housing Act 1957: and this takes one straight back to the arguments arising under 1963 Act and the 1981 Order which I have not accepted. I accept the argument advanced on half of Bromley that the sculpture vested in the London Residuary Body (see section 57(2) of the 1985 Act).
41. In my judgment on 1 April 1986 the sculpture vested in the London Residuary Body. On 1 August 1986 Henry Moore died and shortly thereafter the local press ran an article entitled “Priceless Statue Windfall” in which it was suggested that when the GLC had been abolished the sculpture had passed into the hands of Tower Hamlets. Tower Hamlets acted as if this was so, and in its evidence dated 27 July 2014 says that it had for many years believed itself to be, and had acted in accordance with its being, the legal owner of the sculpture.
42. In April 1987 it lent “Draped Seated Woman” to the Yorkshire Sculpture Park for six months, stirring up some controversy in the local press. Views (or perhaps Stepney Matrons) had changed since 1962. A correspondent now wrote:-

“How is it that the lovely feminine incarnation of beauty like Old Flo can be loaned or given away without anyone in the town hall or art department caring?..... By a combination of town hall arrogance and arts bureaucracy ignorance, we are to be deprived of this thing of beauty...”.

So far as the surviving documents disclose, the London Residuary Body had no part in these arrangements. But it did not object to them.

43. The sculpture returned to its original site in November 1987. But the plinth on which it stood deteriorated: and the sculpture itself was scratched and the subject of graffiti. So in February 1992 Tower Hamlets again removed it and sent it for restoration (including a replacement plinth), paid for by the Henry

Moore Foundation. So far as the surviving documents disclose, the London Residuary Body had no part in these arrangements either.

44. The refurbished sculpture returned to its site on the Stifford Estate in November 1992. It was there when the undistributed assets of the London Residuary Body vested in Bromley under the provisions of Article 3 of the London Residuary Body (Winding Up) Order 1996 SI No. 1996/557. It remained there until November 1997.
45. In 1996 Tower Hamlets decided to demolish the three tower blocks whose grounds provided the setting for the sculpture. It was therefore necessary to deal with “Old Flo”. Tower Hamlets decided to lend the sculpture to the Yorkshire Sculpture Park again on terms that the council would finance the de-installation, the transport to Yorkshire and the costs of restoration: and that at the end of the loan period the Yorkshire Sculpture Park would pay for the return transport, the re-installation costs on the new site (up to a limit of the costs of re-installation on the old site) and would insure the sculpture during the loan period (though in the event insurance was paid for by the Henry Moore Foundation until such time as the risk was covered by a government indemnity). No signed copy of the Loan Agreement survives (if one was ever executed) but the arrangements are clearly recorded in correspondence between Tower Hamlets’ Acting Head of Leisure and the Assistant Curator of the Sculpture Park and in the accompanying drafts. The drafts plainly treated Tower Hamlets as “the lender”, without whose permission no work could be done on the sculpture. Bromley had no part in the making of these arrangements
46. The original loan period expired in April 2000, by which time the former site of the sculpture had been converted into a seating area. But nothing was then done to return the sculpture to Tower Hamlets for siting elsewhere or to document a further loan. There are suggestions in the evidence that on the Sculpture Park’s side, it had moved offices and many of its files were put in store: and on the council’s side, that there had been several changes in staff and office moves resulting in a loss of information. Although the matter emerged briefly in 2002 and 2006 and Tower Hamlets evidently decided to permit a temporary extension of the arrangement, the council never pressed for a fresh formal loan document or for the return of the sculpture, so that it remained at the Yorkshire Sculpture Park on an informal basis and remains there still, 18 years on. Bromley has never enquired after or sought to exercise any rights over the sculpture.
47. The final argument advanced by Tower Hamlets (described by Counsel for Bromley as “a last ditch effort”) is that in these circumstances it has converted the sculpture to its use and Bromley can no longer bring an action to recover it.
48. Although conversion of goods can occur in so many different circumstances that framing a precise definition of the tort is impossible, a sufficient statement of the principles to be applied in addressing this argument is:-

- a) The conduct of Tower Hamlets must have been inconsistent with the rights of Bromley as owner;
- b) The conduct of Tower Hamlets must have been deliberate, not accidental;
- c) The conduct must have been so extensive an encroachment on the rights of Bromley as to exclude Bromley from the use and possession of the sculpture (so going beyond mere interference which may found a claim in trespass);
- d) It is not necessary for Tower Hamlets to have formed a subjective intention to deprive Bromley of its rights as owner; indeed there need not be any knowledge on the part of Tower Hamlets that the sculpture belonged to someone else;
- e) If Tower Hamlets manifested an assertion of rights of dominion over the sculpture which was inconsistent with the rights of Bromley then it committed the tort of converting the sculpture to its own use;
- f) By section 2 of the Limitation Act 1980 (“the 1980 Act”) an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued;
- g) By section 3(2) of the 1980 Act where a cause of action in respect of the conversion of a chattel has accrued and the period prescribed for bringing the action has expired without the owner recovering possession of the chattel then the title of the owner is extinguished.

These propositions are drawn from the speech of Lord Nicholls in Kuwait Airways v Iraqi Airways [2002] UKHL 19; [2002] 2 AC 883 at paragraphs 39 to 43, that of Lord Steyn at paragraph 119 and Halsbury’s Laws of England (5th ed) Volume 97 paragraph 601.

49. In my judgment, on the facts found, the title of Bromley has been extinguished. Focusing solely upon the events of 1997-2002, the removal of the sculpture from its site, the contractual loan to the Yorkshire Sculpture Park for three years, the undertaking of further restoration of the sculpture (in addition to the new plinth provided in 1992) and the exercise of control over what work was done, the decision to entrust the insurance of the sculpture to others, the decision to leave the sculpture where it was rather than to bring it back to Tower Hamlets (certainly deliberate by 2002) were all assertions of rights of dominion over the sculpture inconsistent with the ownership rights of Bromley.
50. Bromley’s first objection to this conclusion is that Tower Hamlets was not exercising any rights of dominion at all but was simply “safeguarding” the sculpture: the minimum action taken to preserve the immediate safety of goods by moving them out of harm’s way is not an act inconsistent with an

owner's rights. The argument is built upon Fouldes v Willoughby (1841) 8 M&W 540 where it was held that a simple asportation of a chattel, without any intention of making any further use of it, was not sufficient to establish conversion (though it may be a sufficient foundation for an action in trespass). But it was clearly held (at p.548):-

“Any asportation of a chattel for the use of the defendant, or a third person, amounts to a conversion; for this simple reason, that it is an act inconsistent with the general right of dominion which the owner of the chattel has in it, who is entitled to the use of it at all times and in all places. When, therefore, a man takes a chattel, either for the use of himself or of another, it is a conversion....”.

When Tower Hamlets took the sculpture for restoration (its own purposes) and for contractual loan to the Yorkshire Sculpture Park (the use of a third person) it was not merely moving the sculpture out of harm's way but otherwise permitting the owner to exercise dominion over it; it was acting inconsistently with the general right of dominion of Bromley, inconsistently with Bromley's entitlement to use the sculpture at all times and in all places. The question which should have been put to the jury in Fouldes v Willoughby was:-

“...whether the act done by the [ferryman], of seizing these horses and putting them onshore, was done with the intention of converting them to his own use i.e. with the intention of impugning, even for a moment, the plaintiff's general right of dominion over them. If so, it would be a conversion; otherwise not.”

In my judgment any jury so directed in the instant case would find that Tower Hamlets had converted the sculpture.

51. Counsel for Bromley next objected that Tower Hamlets could not rely on its own wrong. But: (a) the doctrine of *ex turpi causa* has no place in the law of conversion: Les Laboratoires Servier v Apotex [2014] UKSC 55; [2015] AC 430 at [28]; and (b) the whole process of gaining of title by operation of section 3(2) of the 1980 Act originates in a wrongful act of conversion and there is no principled ground upon which it can be said that local authorities are unable to commit the tort.
52. Counsel for Bromley finally objected that Tower Hamlets had no power to acquire property through an act of conversion. But in my judgment it was not “the act of conversion” that conferred title: it was the effect of s.3(2) of the 1980 Act in consequence of the inaction of Bromley (in failing to bring proceedings within the statutory period) even though the sculpture which it now says was intended to benefit and enrich all Londoners was openly on display in Yorkshire.
53. Accordingly I answer the question raised by this action in the sense that the Henry Moore sculpture “Draped Seated Woman” now belongs to Tower Hamlets.

54. I will hand down this judgement in Liverpool on 8 July. I do not expect the attendance of legal representatives.
55. In the draft judgment circulated to the parties I expressed a provisional view on costs and directed that if the parties were not in agreement with that provisional view then I would consider the matter entirely afresh upon written submissions exchanged according to an agreed timetable. The parties have availed themselves of that alternative: and I will reserve judgement on costs accordingly and will at the same time dispose of any other applications.