

Neutral Citation No: [2020] NICH 12

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Ref: McB11283

Delivered: 26/06/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

Between:

BELFAST CITY COUNCIL

Applicant

and

MADAME ZHANG MEIFANG, THE CONSUL GENERAL OF THE PEOPLE'S
REPUBLIC OF CHINA, BELFAST

Respondent

McBRIDE J (Ex tempore judgment)

Application

[1] Belfast City Council, ("the Council"), applied *ex parte* for an interim injunction against Madame Zhang Meifang, the Consul General of the People's Republic of China, Belfast, seeking to restrain her or her servants and agents from carrying out certain development work at 75-77 Malone Road, Belfast BT9 6SH ("the premises") without the benefit of planning permission.

[2] Ms Kiley and Mr Scofield QC appeared on behalf of the Council. There was no appearance on behalf of the respondent. Solicitors acting on behalf of the defendant stated in correspondence their client was not recognising the jurisdiction of this court.

Chronology of Proceedings

[3] This application was brought before the court on an *ex parte* basis. At the first hearing the court, after hearing submissions on jurisdiction, directed that a certificate be obtained from the Secretary of State for Foreign and Commonwealth Affairs pursuant to section 4 of the Diplomatic Privileges Act 1964. The court further directed that the matter should be heard on an *inter parties* basis and directed that the respondent be advised of the adjourned hearing date. At the adjourned hearing, the

court was given updated correspondence from the solicitors acting for the defendant. Ms Kiley advised the court that the respondent had now voluntarily stopped the works and had agreed to engage in discussions. As a result the case was further adjourned. When it was listed for review again Ms Kiley reported to the court that good progress had been made. At that review hearing Mr Martin McBurney, a resident, had filed an affidavit and applied to be joined as a party. The application for injunction and Mr McBurney's application to be joined were both adjourned for one week.

[4] At the next review hearing Ms Kiley reported that there had been a breakdown in the discussions. The Council had now received evidence from residents that works were being carried out at the premises. Although the Council indicated that it wanted to continue discussions, it requested that the case be relisted. The case was relisted for hearing today and the court directed that a trial bundle be lodged together with a Booklet of Authorities. In addition, Mr McBurney's solicitors were asked to lodge submissions in relation to his application to be joined.

Evidence

[5] The evidence before the court consisted of two affidavits by Una McDonald, Senior Planning Officer, sworn on 9th June 2020 and 22nd June 2020; three affidavits by Ms Nora Largey, solicitor acting on behalf of the Council, sworn on 11th, 15th and 22nd June, and an affidavit sworn by Mr McBurney on 15th June. In addition, the court had the benefit of the two certificates issued by the Secretary of State for Foreign and Commonwealth affairs. These confirm that the premises are consular premises and that Madame Zhang Meifang is the Consul General of the People's Republic of China in Belfast. Those certificates are conclusive proof of those two facts.

[6] As appears from the affidavits and the exhibits the premises are located within the Adelaide Park Conservation area. The building and all the structures and trees within and around the premises are protected by Conservation Area Status. The building and all structures within the curtilage of the premises were listed on 30 January 1985. Trees within the conservation area are also given protective status under the Planning Act (Northern Ireland) 2011.

[7] According to the papers before the court, the Land Certificate records that the full owner of the premises is "The Consulate General of the People's Republic of China in Belfast" and that transfer was effected by way of transfer document 2016 125447/N. The transfer was registered on 14th July 2016. The court does not have a copy of the land certificate and does not have a copy of the transfer document. That is something I will return to.

[8] On 13th February 2020 the applicant received a complaint relating to the erection of a perimeter wall at the premises. A Council enforcement officer carried

out a site visit. He observed the erection of a block work perimeter wall along the boundary of the premises. Ms McDonald then visited the site on 3rd March and observed the construction of a block wall with stone cladding. The applicant had previously received a planning application and a Listed Building application from Robinson McIlwaine Architects LLP, agents on behalf of the Consulate of the People's Republic of China, Belfast in respect of the premises in May 2019. At that time the proposed works were described as, "a 3 metre high boundary wall by Malone Road with widening the vehicular entrance and new pedestrian entrance. 3 m high wall by Adelaide Park with new vehicular entrance and new pedestrian entrance. Addition of anti-climb devices on internal boundary fences/walls. New security pavilion by Adelaide Park entrance. New modular security kiosk at the main entrance off the Malone Road. Erection of a 16 car carport with wash bay."

[9] The Department for Communities' Historic Environment Division - Historic Buildings, during the planning consultation process, confirmed that the proposed works had an adverse impact on the listed buildings. In addition, the Council's Conservation and Heritage Services confirmed that the proposed works would have a detrimental impact on the historic buildings and surrounding conservation area. On 17th February 2020 the defendant withdrew its planning application. Notwithstanding this the Council received a number of photographs submitted by local residents which allegedly showed that works were continuing at the premises throughout April and May and into 1st June of this year. The alleged work involved digging a trench.

[10] On 25th May 2020 Joe Higginson, an Arboriculturist, employed by the Council visited the site. He advised that the street trees do not have roots growing towards the road, rather their roots primarily grow along the footpath and into neighbouring residential properties. His concern was that if a trench was excavated next to the street trees on the property at the side of the footpath it was inevitable that the supporting buttress roots would be severed rendering the trees unstable and that led to concern about public safety. He noted that several large supporting and buttress roots had been severed but he required a site inspection to confirm whether the roots belonged to the street trees or the trees within the premises.

[11] On 1st June 2020 a provisional Tree Preservation Order was issued and served on the defendant by handing a copy to staff at the Consulate for the Consul's attention and copies of the notice were then displayed on three trees on Adelaide Park. On 4th June residents submitted photographs allegedly showing damage to a listed pillar at the entrance to the premises. On the same date, following discussions between the applicant and Consulate officials, the Consul General agreed to reinstate the planning application.

[12] On 5th June 2020, as works were continuing at the site the Council issued a Temporary Stop Notice and a Listed Building Enforcement Notice. The Temporary Stop Notice required the immediate cessation of (i) construction of the perimeter wall along the boundaries of the premises; (ii) digging of trenches and in filling with

concrete; (iii) removal of vegetation; (iv) alterations/demolition of existing walls and gate pillars along Eastern boundary of the premises. The Listed Building Enforcement Notice required works on the pillars to be re-instated within 28 days from the date of the Notice and the Notice was served by agreement on Consulate staff.

[13] On 8th June 2020 Ms McDonald visited the site. She observed a construction lorry delivering concrete and workmen working at the location carrying out works in contravention of the Temporary Stop Notice and Listed Building Enforcement Notice. On the same date the Council's solicitors wrote to the respondent's solicitors advising that the Council intended to apply to the court for an injunction. The respondent's solicitors replied by letter dated 8th June enclosing a letter of the same date sent to Belfast Planning Office in response to the Temporary Stop Notice and the Listed Building Enforcement Notice. In this correspondence the respondent claimed immunity and denied that the court had jurisdiction to grant the relief sought. Proceedings were then issued by the Council. On 16th June meetings took place between the Council and the Consul General which demonstrated a new attitude on the part of the Consul General. It was agreed that no further works would be carried out at the premises save for removal of materials and some painting work.

[14] The next day however Una McDonald noted the erection of a further section of wall at the premises. On 18th June the respondent's solicitors sent an email to Ms Largey of the Council and in this email they stated as follows:

"It has been made clear to my clients both in correspondence and meetings that they consider it most important to have a proper acknowledgment from the City that immunity is recognised."

It further stated:

"My clients requested this acknowledgment be made by the CEO on behalf of the City. My clients are prepared to go forward in the spirit of compromise, they have agreed to co-operate as far as possible with the issues raised by the Planning Department. They do not consider they have to do so, hence they consider it is a gesture of good faith but they consider such gestures should be shown on both sides. That is why my clients feel it is so important that this immunity is properly recognised by the City. Going forward our clients therefore propose to hold back from any further meetings, discussions or works for a short period to give the City time to properly respond as requested in this letter. I believe my clients are showing genuine willingness to work with the City Planning in the

same vein it is hoped the City can reciprocate similar good will on this basis.

Can we please have your response by the close of business?"

[15] The Council's solicitors replied to correspondence indicating that they would not give such an acknowledgement. The agreement then broke down and as a result, as Ms Largey avers in her affidavits, on 19th June works continued at the premises. On 19th June the respondent's solicitors sent a letter saying that they were not now proceeding with the planning application and would carry on with the works. On 21st June a new screen was erected around the premises making it difficult, if not impossible to see what works were going on at the premises. On 24th, 25th and 26th of June it was noted by residents and Council officials that further deliveries of materials were made to the premises.

Submissions of the parties

[16] The main concerns of the Council are; firstly the importance of enforcing planning control; secondly, the impact that the works are having in changing the character of this area, which is an area of conservation; thirdly, concern about public safety due to the fact that the trees are unstable as roots have been severed and fourthly, concern regarding road safety as the new egress does not have adequate visibility splays.

[17] The respondent, although aware of the proceedings, has not participated. The respondent's solicitors however have sent through a number of legal submissions which are contained in the correspondence particularly the letter of 8th June 2020. In addition a legal note or legal submission has been provided by Ramby de Mello of No: 5 Chambers, London. As appears from the solicitor's correspondence and submissions by counsel the respondent claims state, diplomatic and/or consular immunity and denies that the court has jurisdiction to grant any relief.

[18] The Council has addressed the issue of jurisdiction in a written note provided by Ms Kiley and by way of oral submissions initially by Ms Kiley and then latterly, today, by Mr Scofield. The court records its thanks to counsel for the assistance given by way of detailed legal submissions which demonstrated extensive research in unearthing relevant authorities. The court also records its thanks to Ms Largey, solicitor for the preparation of an impeccable trial bundle which was prepared at short notice and was of great assistance to the court which had prior to today been trying to hear the case remotely and at the same time splitting the screen to read a large number of emails and authorities.

Consideration

[19] The first question the court has to consider is whether it has jurisdiction to grant the relief claimed. Insofar as the claim is against the People's Republic of China ("the Chinese State") I consider that this court has no jurisdiction to grant the relief sought. Section 1 of the State Immunity Act 1978 ("the 1978 Act") provides that:

"A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act."

The 1978 Act sets out a number of exceptions to immunity. Of relevance in this case is section 6 which provides that:

"A State is not immune as respects proceedings relating to-

(a) any interests of the State in, or its possession or use of, immovable property in the United Kingdom..."

[20] Consequently, I am satisfied that this court would have jurisdiction to deal with proceedings relating to the premises in question. Section 13 of the 1978 Act however sets out other procedural privileges available to a State. In particular, it provides at subsection 2 (a) that, "relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property..."

[21] Although Ms Kiley submitted that the court could grant the injunction sought as it did not involve recovery of land, I consider that section 13 sub-paragraph (2)(a) sets out four distinct and separate types of relief which the court cannot grant and an injunction is one of these. Mr Scofield today accepted that this court did not have power to grant an injunction against a State. Accordingly, I consider that the court has no power to grant injunctive relief against the Chinese State. Insofar as the relief sought by the Council is an injunction against the Chinese State I find that the court has no jurisdiction to grant such relief.

[22] Section 6(4) of the 1978 Act provides:

"(4) A court may entertain proceedings against a person other than a State notwithstanding that the proceedings relate to property –

(a) which is in the possession or control of a State; or

(b) in which a State claims an interest,

if the State would not have been immune had the proceedings been brought against it ...”

[23] Mr Scoffield on behalf of the Council submitted that the court could grant injunctive relief against Madame Zhang Meifang as she was the owner of the premises. The papers before the court indicate that the Land Certificate for the premises states that the Consulate General of the People’s Republic of China in Belfast of Apartment 11.19 the Ark, 21 Queen’s Road, Ballymacarrett, Belfast, BT3 9FM, was registered on 14 July 2016 as the full owner of the premises. Ms Kiley and latterly, Mr Scoffield, submitted on behalf of the Council that accordingly Madame Zhang Meifang, the current Consul General, was the legal owner of the premises and therefore the Council’s proceedings could be brought against her as owner of the premises.

[24] I am not satisfied that Madame Zhang Meifang is the legal owner of the premises. I do so on the basis that the premises are not registered in her name, rather they are registered in the name of the Consulate General. Further, the Diplomatic and Consular Premises Act 1987 provides at section 1:

“(1) ... where a State desires that land shall be diplomatic or consular premises, it shall apply to the Secretary of State for his consent to the land being such premises.”

Further, sub-section 3 states:

“(3) In no case is land to be regarded as a State’s diplomatic or consular premises ... unless it has been so accepted or the Secretary of State has given that State consent ...”

Further, sub-paragraph 6 refers to:

“... a State ceasing to use land as premises of its mission or as consular premises ...”

[25] It is my view that it is clear from all these provisions that consular premises belong to a State. In the present case, as appears from the certificate issued by the Secretary of State pursuant to section 1(7) of the Diplomatic and Consular Premises Act 1987 that the Secretary of State gave permission to the Chinese State for the premises to be consular premises. For all these reasons, I am satisfied that the premises are owned by the Chinese State. If I am wrong about that and Madame Zhang Meifang is the legal owner of the premises I find that she holds the premises on behalf of the Chinese State. Consequently, the premises are premises which are either owned by the Chinese State or are premises in which it has an

interest and/or are premises in their possession or control. Mr Scoffield did not demur from that view but submitted that in accordance with section 6 of the 1978 Act proceedings could be brought against her in her personal capacity as occupier of the premises and as the person responsible for commissioning the works which he alleged were in breach of planning legislation.

[26] Even though the proceedings relate to property which the State either owns or in which it claims an interest, that in and of itself is not a bar to jurisdiction due to the provisions of section 6 of the 1978 Act which states that a State is not immune to proceedings relating to property. The State obviously has the privileges as set out at section 13(2)(iii) and therefore an injunction could not issue against the State but section 13 applies only to a State. It does not apply to an individual and accordingly it is my view that the 1978 Act does not oust the jurisdiction of this court to hear proceedings relating to the premises even though the premises may be in the ownership or possession or control of the Chinese State and there is nothing to prevent this court granting an injunction against an individual who is the occupier of the premises if there is an arguable case that that person is carrying out unlawful activities, provided that individual cannot claim immunity.

[27] The question therefore arises whether the respondent can claim immunity. Article 43 of the Vienna Convention on Consular Relations which forms part of UK law by reason of section 1(1) of the Consular Relations Act 1968, provides as follows:

“Immunity from jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:
 - (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
 - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.”

In addition, the respondent had submitted in correspondence and in counsel’s legal note that the respondent enjoyed additional immunity by reason of The Consular Relations (Privileges and Immunities) (People’s Republic of China) Order 1984 (“the 1984 Order”). By reason of the 1984 Order consular posts of the People’s Republic of

China and persons connected with them are granted additional privileges and immunities to those set out in Schedule 1 to the Consular Relations Act 1968. In particular, section 2 of the 1984 Order gives “service staff” immunity from civil and administrative jurisdiction in respect of any act performed by them in the exercise of consular functions.

[28] Section 2(f) of the 1984 Order extends exemption from liability to measures of execution set out in Article 31 of the Vienna Convention to members of a consular post of the Chinese State and section 6 extends provisions of the Vienna Convention relating to inviolability and protection of premises to consular premises of the Chinese State.

[29] Mr Scofield submitted that the 1984 Order did not apply because the extension to immunity in respect of civil administrative jurisdiction applied to “service staff” which in accordance with the definition set out in the Act did not include the Consul General.

[30] Without ruling on the point it is my view that even if the immunity available under the 1984 Order does not apply to the respondent it is essentially identical to the immunity she enjoys pursuant to Article 43 of the Vienna Convention in any event. I am therefore satisfied that these provisions grant civil immunity to the respondent, although that immunity is limited to acts performed by her in the exercise of consular functions. Therefore, the issue to be determined is whether the respondent is carrying out consular functions by commissioning the works being carried out at the premises.

[31] Article 5 of the Vienna Convention which is set out in Schedule 1 to the Consular Relations Act 1968 provides that “Consular functions” consist of the activities set out in paragraphs (a) to (m). Paragraph (a) “Protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate within the limits permitted by international law.” Paragraph (m) provides, “performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State.”

[32] Mr Scofield submitted that commissioning and carrying out works in breach of planning law was clearly not a consular function and he specifically relied on the provisions in Article 5(m). He submitted that it was self-evident that breaking the law was not a consular function. The role was a representative role and involved assisting nationals and developing ties and relations. He further stated that as section 6 of the State Immunity Act did not give immunity to an individual with regard to land holding, Article 5(a) could not be relied upon to authorise activity which was otherwise in contravention of the law of the UK. In addition, he submitted that the security of premises was provided for by Articles 27 and 31 and therefore Article 5 (a) could not be relied upon for this purpose.

[33] In contrast, the note provided by the respondent's counsel asserts that the respondent holds the premises on behalf of the Chinese State and avers that the commissioning of the building works is a consular function as the works are being undertaken to protect the interests of the Chinese State. Consequently, it was submitted that the works came within the provisions of Article 5(a) as the works are being undertaken for the security, prosperity and well-being of the Chinese government.

[34] Although counsel were unable to refer to any jurisprudence on the meaning of "Consular functions" the court was referred to the case of *Reyes v Al-Malki* [2017] UKSC 61 which I find of some assistance in interpreting the relevant legislation. Lord Sumption at paragraph [17] considered the jurisdictional immunity set out in Article 31 of the Convention on Diplomatic Immunity and stated as follows:

"17. Articles 31 to 40 of the Convention represent an elaborate scheme which must be examined as a whole. Fundamental to its operation is the distinction, which runs through the whole instrument, between those immunities which are limited to acts performed in the course of a protected person's functions as a member or employee of the mission, and those which are not. The distinction is fundamental because what an agent of a diplomatic mission does in the course of his official functions is done on behalf of the sending state. It is an act of the sending state, even though it may give rise to personal liability on the part of the individual agent. In such a case, the individual agent is entitled to both diplomatic and state immunity, and the two concepts are practically indistinguishable: see *Jones v Ministry of Interior for the Kingdom of Saudi Arabia* (Secretary of State for Constitutional Affairs intervening) [2007] 1 AC 270, at paras 10 (Lord Bingham), 66-78 (Lord Hoffmann). By comparison, the acts which an agent of a diplomatic mission does in a personal or non-official capacity are not acts of the state which employs him. They are acts in respect of which any immunity conferred on him can be justified only on the practical ground that his exposure to civil or criminal proceedings in the receiving state, irrespective of the justice of the underlying allegation, is liable to impede the functions of the mission to which he is attached. The degree of impediment may vary from state to state and from case to case. But the potential problem for the conduct of international relations has been recognised from the earliest days of diplomatic intercourse, and in the United Kingdom ever since the arrest of the Russian ambassador for debt as he returned

from an audience with Queen Anne led to the passing of the Diplomatic Privileges Act 1708.

18. The Vienna Convention distinguishes between diplomatic agents (ie ambassadors and members of their diplomatic staff), the administrative and technical staff of the mission, their respective families, and service staff of the mission. The highest degree of protection is conferred on diplomatic agents. In their case, the Convention substantially reproduces the previous rules of customary international law, by which a diplomatic agent was immune from the jurisdiction of the receiving state (i) in respect of things done in the course of his official functions for an unlimited period, and (ii) in respect of things done outside his official functions for the duration of his mission only: see *Zoernsch v Waldock* [1964] 1 WLR 675, 684 (Willmer LJ), 688 (Danckwerts LJ), 691-692 (Diplock LJ). Thus, article 31(1) confers immunity on diplomatic agents currently in post in respect of both private and official acts, subject to specific exceptions for the three designated categories of private act. Under article 39(2), once a diplomatic agent's functions have come to an end, his immunities under article 31 will normally cease from the moment when he leaves the territory of the receiving state. Thereafter, he remains immune in the receiving state only with respect to "acts performed ... in the exercise of his functions as a member of the mission". This is commonly known as the "residual" immunity. It is one of four cases in which, in contrast to the immunity under article 31, a protected person's immunity is limited to official acts, the others being (i) the immunity conferred on a diplomatic agent who is a national of or permanently resident in the receiving state, which is limited to "official acts performed in the exercise of his functions" (article 38(1)); (ii) the immunity conferred on administrative and technical staff of a mission, which "shall not extend to acts performed outside the course of their duties" (article 37(2)); and (iii) domestic staff of the mission, whose immunity is confined to "acts performed in the course of their duties" (article 37(3)). The same distinction applies to consular officers and employees under article 43 of the parallel Vienna Convention on Consular Relations (1963). Their immunity is limited to "acts performed in the exercise of consular functions".

19. ... If the relevant acts were within the scope of the diplomat's official functions, the enquiry ends there. He is immune. ..

20. Accordingly, the first question is what are a diplomatic agent's official functions. The starting point is the functions of the mission to which he is attached. They are defined in article 3 of the Convention, and comprise all the classic representational and reporting functions of a diplomatic mission. It is, however, clear that the official functions of an individual diplomatic agent are not necessarily limited to participating in the activities defined by article 3. They must in the nature of things extend to a wide variety of incidental functions which are necessary for the performance of the general functions of the mission. But whether incidental or direct, a diplomatic agent's official functions are those which he performs for or on behalf of the sending state. The test is whether the relevant activity was part of those functions. That is the basis on which the courts in both England and the United States have approached the residual immunity in article 39(2): see, as to England, *Wokuri v Kassam* [2012] ICR 1283, at paras 23-26 (Newey J) and *Abusabib v Taddese* [2013] ICR 603, at paras 29-34 (Employment Appeal Tribunal); and as to the United States, *Baoanan v Baja* 627 F Supp 2d 155 (2009) at paras 3-5; *Swarna v Al-Awadi* 622 F 3d 123 (2010) (2nd Circuit Court of Appeals) at paras 4-10. I think that it is correct, and equally applicable to the corresponding expression in article 31(1)."

[35] I find that running through the scheme of immunity provided for in the Vienna Convention there is a clear dichotomy between acts carried out by an official on behalf of the sending State and acts which are by their nature essentially private acts carried out by an official. Therefore, in determining whether the acts done by the defendant are carried out in the exercise of consular functions it is necessary to consider whether the act is a private act by the Consul General or is an act done by her on behalf of the Chinese State. Further, in the same way that the Supreme Court held that the functions of diplomatic staff are not necessarily limited to participating in activities defined by Article 3 of the Vienna Convention and held that such functions extended to incidental functions necessary for the performance of the general functions of the mission, I find that the definition of "consular functions" should be interpreted in the same way. Accordingly, I find that consular functions are not limited to exercising the activities set out in Article 5 but also includes incidental functions.

[36] I am satisfied from the correspondence sent on behalf of the respondent and from the respondent's counsel's note that the acts being carried out at the premises are acts carried out by the respondent on behalf of the Chinese State for security purposes. This was not disputed by the Council. I consider therefore that the works that have been commissioned by the respondent are being done by her on behalf of the Chinese State. It is not a private activity that she is carrying out, rather she is commissioning the works in her official capacity as Consul General by or on behalf of the Chinese State. It is my view that acts carried out by a Consul General on behalf of the sending State are by their nature "consular functions".

[37] In the alternative I find that the acts are incidental to the Consular General's functions and/or come within the provisions of Article 5 (a) as the works are works of security. In addition I am satisfied that the provisions of Article 27 and 31 are not exclusive and therefore Article 5 can be relied upon to permit a Consul General to carry out works to premises. Accordingly, it is my view that immunity applies and therefore I find that the respondent enjoys immunity. It is important to stress that diplomatic immunity does not mean the person is not acting unlawfully. It just means that she is immune from the jurisdiction of this court.

[38] If I am wrong in my interpretation of the relevant statutes relating to immunity and the respondent is not entitled to immunity I would nonetheless refuse to grant the relief sought in this case. An injunction is a discretionary remedy and the court will not grant such relief in vain. It was candidly accepted by Mr Scoffield when asked, that any such order would be unenforceable. That is because under the provisions of the 1984 Order, the Vienna Convention and the other relevant legislation, the premises and the person of Madame Zhang Meifang are inviolate. Therefore enforcement proceedings cannot be brought either against Madame Zhang or at the premises without consent. I am satisfied that the grant of an injunction in this case would be "beating the air" because the respondent has refused to accept the jurisdiction of this court, and although the order could be served by post and/or the court could dispense with service, no one can enter the premises and Madame Zhang Meifang cannot be arrested and brought before the court in the event that she breaches any injunction this court would grant.

[39] Mr Scoffield argued that the grant of an injunction would be effectual for a number of reasons. In particular, he stated that there was a hope that the grant of an injunction by the court would be sufficient to persuade the respondent to modify her actions as she would know the court had ruled her compliance with the Notices issued by the Council was required. I reject that submission because it is quite clear to date that the respondent has refused to recognise the authority of this court, she has not appeared before this court, she has ignored the Notices to date and there is nothing before this court to indicate that the granting of an injunction by this court would in some way ensure compliance. In fact, it seems to me from the correspondence that it would have the opposite effect. When the Council refused to accept that the Consul General, Madame Zhang Meifang, had immunity that actually led to a breakdown in discussions which were quite fruitful at that stage.

[40] Secondly, Mr Scoffield said that the grant of an injunction would assist in the diplomatic effort with the Foreign Office and he referred to commentary in *Diplomatic Law, Commentary on the Vienna Convention on Diplomatic Relations*, 4th Ed. by Eileen Denza, Oxford University Press, pages 264-265 as authority for the proposition that intervention by the court will often assist in that process. I accept that in certain cases that is correct but the difference in this case is that the works that are being carried out are not private acts but rather are acts done on behalf of the sending State and therefore I consider that the grant of an injunction would hinder rather than assist diplomatic efforts. It seems to me that seeking the certificates from the Foreign and Commonwealth Office did have the effect of producing discussions at a high level through diplomatic channels and I think that that is something that would work much better than the grant of an injunction.

[41] Thirdly, he said that an injunction would be binding on third parties. Accordingly, it could be served on the workmen who were subject to the jurisdiction of the court if they breached the injunction. Upon questioning by the court Mr Scoffield accepted that the injunction if granted would be limited to injuncting acts carried out in breach of the Stop Notice. He accepted that mere delivery of materials to the site did not constitute a breach of the Stop Notice and accordingly workmen delivering materials to the site would not be in breach of the injunction if granted. Breach would only occur when workmen were proved to be carrying out acts in breach of the Stop Notice. Given that screening has now been erected around the site and given that the premises are inviolate I consider that it would be very difficult if not impossible to prove that workmen were acting in breach of any injunction granted. Accordingly, I find that enforcement even against the workmen would be virtually impossible and therefore granting an injunction just so that it be served on third parties, again would be “beating the air.”

[42] The fourth possibility Mr Scoffield pointed to was that immunity could be waived by the sending State. On the basis of all the correspondence it seems to me that that is highly unlikely given that the works are being directed by the State of China.

[43] Accordingly, I reject all of those arguments. The Council may however wish to give some consideration to whether proceedings can or should be issued against the builders.

[44] Although I have found that the respondent enjoys immunity in this case, immunity is a procedure which protects someone who is carrying out what may otherwise be an unlawful act. I consider, on the basis of the papers before me that there is at least an arguable case that the acts complained of are unlawful acts because they are being done in breach of planning law. Gillian Ormiston in an email to the respondent’s solicitors dated 28 February 2020 advised as follows:

“...should planning permission be required to do the works intended – which seems to be the case (and have

been advised that the address is within a Conservation area)- the Consulate MUST apply and gain the relevant planning permissions...

Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State.

You and your client should please bear in mind that there will likely be consequences if any unauthorised building/refurbishment takes place at the property. I very strongly recommend that you work with Belfast City Council Planning Authority to arrive at a satisfactory conclusion. For our part we are prepared to work with all parties to achieve such an outcome."

Mr Scofield described the "consequences" referred to in this email as the "nuclear option" whereby the Secretary of State for Foreign and Commonwealth Affairs can withdraw the grant of permission to use the premises as consular premises and if he does so the Chinese State's right to occupy the premises will terminate. That would be a very serious consequence. Therefore, it is my view that it is all the more important at this stage for the respondent to engage in discussions with the Council so that those serious consequences do not occur.

[45] I hope that my ruling in this case, that Madame Zhang Meifang has immunity, will assist in having discussions re-commenced. It seems to me from the letter sent by the respondent's solicitors dated 18th June 2020 that if the respondent had been given an assurance by the Council that the respondent had immunity, the respondent would have continued to engage in discussions and would have applied for planning permission. It is my hope that the ruling I have given now gives that assurance and because of that the Consul General will hold to her agreement to continue to have meaningful discussions with the Council to re-apply for planning permission and in the interim period to stop, on a voluntary basis, the works that are being carried out.

[46] I therefore refuse the application. I do not therefore need to make a ruling on the joinder of Mr McBurney.

[47] I reserve costs.