Neutral Citation Number: [2024] EWHC 2187 (Ch)

Case No: PT-2023-CDF-000010

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 21 August 2024

Before:

HIS HONOUR JUDGE KEYSER KC
SITTING AS A JUDGE OF THE HIGH COURT

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Between:

PEMBROKESHIRE COUNTY COUNCIL	**Claimant**
- and -	
(1) RYAN JACK COLE	
(2) DECLAN TOM COLE	**Defendants**

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Owain Rhys James (instructed by **Department of Law and Governance**) for the **Claimant**
Harry Spurr (instructed by **Thrings LLP**) for the **Defendants**

Hearing date: 5 August 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 21 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE KEYSER KC

Judge Keyser KC :

1. By a Part 8 claim issued on 20 May 2023, the claimant, Pembrokeshire County Council, as the relevant local planning authority, applies for a mandatory injunction against the defendants, Ryan Cole and Declan Cole, pursuant to section 187B of the Town and Country Planning Act 1990 ("the Act"). The injunction is sought by way of remedy for what is acknowledged to be unauthorised development at Cwm Farm, Narberth, Pembrokeshire. Since the commencement of proceedings much of the unauthorised development has been remedied, and the scope of the proposed injunction is now limited to the removal of a cattle shed at the farm and the covering with soil of a track that was made for the purposes of access to and from the cattle shed.

2. I shall set out the relevant law and summarise the relevant facts. Then I shall set out and explain my conclusions.

3. I am grateful to Mr James and Mr Spurr, counsel respectively for the claimant and the defendants, for their submissions.

The Law

4. Section 187B of the Act provides in relevant part:

> "(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
>
> (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.
>
> …
>
> (4) In this section 'the court' means the High Court or the county court."

5. In *South Buckinghamshire District Council v Porter* [2001] EWCA Civ 1549, [2002] 1 WLR 1359, Simon Brown LJ, with whose judgment Peter Gibson and Tuckey LJJ agreed, set out the proper approach to the exercise of the jurisdiction under section 187B. Giving guidance of general application, though expressed with reference to the particular facts of the cases before the Court (which involved gypsies occupying mobile homes on their own land in breach of planning control—significantly different from the facts of the present case), he said:

> "38. … It seems to me perfectly clear that the judge on a section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning

control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J suggested was the case in the pre-1998 Act era, 'entirely foreclosed' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.

39. Relevant too will be the local authority's decision under section 187B(1) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

40. Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and

> for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case.
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> 41. True it is, as Mr McCracken points out, that, once the planning decision is taken as final, the legitimate aim of preserving the environment is only achievable by removing the gipsies from site. That is not to say, however, that the achievement of that aim must always be accepted by the court to outweigh whatever countervailing rights the gipsies may have, still less that the court is bound to grant injunctive (least of all immediate injunctive) relief. Rather I prefer the approach suggested by the 1991 Circular: the court's discretion is absolute and injunctive relief is unlikely unless properly thought to be 'commensurate'—in today's language, proportionate. … Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought—here the safeguarding of the environment— but also that it does not impose an excessive burden on the individual whose private interests—here the gipsy's private life and home and the retention of his ethnic identity—are at stake.
>
> 42 I do not pretend that it will always be easy in any particular case to strike the necessary balance between these competing interests, interests of so different a character that weighing one against the other must inevitably be problematic. This, however, is the task to be undertaken by the court and, provided it is undertaken in a structured and articulated way, the appropriate conclusion should emerge."

6. On appeal, the House of Lords approved the approach of the Court of Appeal: [2003] 2 AC 558. Lord Bingham explained the origins of the statutory power of local planning authorities to apply for injunctions to restrain breaches of planning control; I cite selectively:

> "12. The second crucial instrument of control provided by the Act is the enforcement notice, which local planning authorities are empowered to issue by section 172 where it appears to them that there has been a breach of planning control and that it is expedient to issue a notice. Once the notice has taken effect, it amounts to a mandatory order to do what the notice specifies as necessary to remedy the breach (section 173). Failure to comply may be penalised, on summary conviction, by a substantial fine, and on conviction on indictment by an unlimited fine (section 179(8)). Persistent non-compliance may give rise to repeated convictions (section 179(6)). The coercive effect of an enforcement notice may be reinforced by a stop

> notice, which the local planning authority may (save in the case of buildings used as dwelling houses) serve if they consider it expedient that any relevant activity should cease before the expiry of the period for compliance (section 183). Failure to comply may be visited with the same penalties as on non-compliance with an enforcement notice (section 187(2)), and persistent non-compliance may give rise to repeated convictions (section 187 (1A)). Again, however, the local planning authority's decision on enforcement is not final: a right of appeal to the Secretary of State lies against an enforcement notice (section 174). On appeal the merits of the planning situation may be fully explored and an application for planning permission may be made (section 174(2)(a)). In this instance also the control regime is entrusted to democratically-accountable bodies, the local planning authority and the Secretary of State. The role of the court is confined to determining a challenge on a point of law to a decision of the Secretary of State (section 289), and to its ordinary supervisory jurisdiction by way of judicial review.
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> 13. The means of enforcement available to local planning authorities under the 1990 Act and its predecessors, by way of enforcement orders, stop orders and criminal penalties, gave rise to considerable dissatisfaction. There were a number of reasons for this, among them the delay inherent in a process of application, refusal, appeal, continued user, enforcement notice, appeal; the possibility of repeated applications, curbed but not eliminated by section 70A of the 1990 Act; and the opportunities for prevarication and obstruction which the system offered. …
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> 14. The perceived inadequacy of local authorities' enforcement powers led them to seek injunctive relief, whether in a relator action in the name of the Attorney General …, or by invoking the general injunctive power of the court …, or, later, under section 222 of the Local Government Act 1972 … Dissatisfaction with the efficacy of measures to enforce planning control however persisted, and in July 1988 Mr Robert Carnwath QC was asked by the Secretary of State to examine the scope and effectiveness of existing enforcement provisions and recommend improvements.
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> …
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> 16. Legislative effect was given to Mr Carnwath's recommendation by section 187B, inserted into the 1990 Act by section 3 of the Planning and Compensation Act 1991, which became effective on 2 January 1992. …"

(See also *per* Lord Steyn at [45]-[46].) Lord Bingham quoted at [20] the passages in Simon Brown LJ's judgment that I have set out. At [38] he said:

> "The guidance given by the Court of Appeal in the judgment of Simon Brown LJ quoted in paragraph 20 above was in my opinion judicious and accurate in all essential respects and I would endorse it."

(To similar effect, see *per* Lord Hutton at [88] and Lord Scott of Foscote at [103].)

7. The speeches in the House of Lords have an importance going beyond the approval of Simon Brown LJ's guidance. There was no discernible difference of approach among them, and I restrict myself to some remarks of Lord Bingham, with whose reasoning all members of the Appellate Committee agreed:

> "28. The court's power to grant an injunction under section 187B is a discretionary power. The permissive 'may' in subsection (2) applies not only to the terms of any injunction the court may grant but also to the decision whether it should grant any injunction. It is indeed inherent in the concept of an injunction in English law that it is a remedy that the court may but need not grant, depending on its judgment of all the circumstances. Underpinning the court's jurisdiction to grant an injunction is section 37(1) of the Supreme Court Act 1981, conferring power to do so 'in all cases in which it appears to the court to be just and convenient to do so'. Thus the court is not obliged to grant an injunction because a local authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction and so makes application to the court. …
>
> 29. The court's discretion to grant or withhold relief is not however unfettered (and by quoting the word 'absolute' from the 1991 Circular in paragraph 41 of his judgment Simon Brown LJ cannot have intended to suggest that it was). The discretion of the court under section 187B, like every other judicial discretion, must be exercised judicially. That means, in this context, that the power must be exercised with due regard to the purpose for which the power was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. Since the facts of different cases are infinitely various, no single test can be prescribed to distinguish cases in which the court's discretion should be exercised in favour of granting an injunction from those in which it should not. Where it appears that a breach or apprehended breach will continue or occur unless and until effectively restrained by the law and that nothing short of an injunction will provide effective restraint (*City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697, 714), that will point strongly towards the grant of an injunction. So will a history of unsuccessful enforcement and persistent non-compliance, as will evidence that the defendant has played the system by wilfully exploiting every opportunity for

prevarication and delay, although section 187B(1) makes plain that a local planning authority, in applying for an injunction, need not have exercised nor propose to exercise any of its other enforcement powers under Part VII of the Act. In cases such as these the task of the court may be relatively straightforward. But in all cases the court must decide whether in all the circumstances it is just to grant the relief sought against the particular defendant.

30. As shown above the 1990 Act, like its predecessors, allocates the control of development of land to democratically-accountable bodies, local planning authorities and the Secretary of State. Issues of planning policy and judgment are within their exclusive purview. As Lord Scarman pointed out in *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 141, 'Parliament has provided a comprehensive code of planning control.' In *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295, paras 48, 60, 75, 129, 132, 139-140, 159 the limited role of the court in the planning field is made very clear. An application by a local planning authority under section 187B is not an invitation to the court to exercise functions allocated elsewhere. Thus it could never be appropriate for the court to hold that planning permission should not have been refused or that an appeal against an enforcement notice should have succeeded or (as in *Hambleton* [1995] 3 PLR 8) that a local authority should have had different spending priorities. But the court is not precluded from entertaining issues not related to planning policy or judgment, such as the visibility of a development from a given position or the width of a road. Nor need the court refuse to consider (pace *Hambleton*) the possibility that a pending or prospective application for planning permission may succeed, since there may be material to suggest that a party previously unsuccessful may yet succeed, as the cases of Mr Berry and Mrs Porter show. But all will depend on the particular facts, and the court must always, of course, act on evidence.

…

32. When granting an injunction the court does not contemplate that it will be disobeyed: In *re Liddell's Settlement Trusts* [1936] Ch 365, 373-374; *Castanho v Brown & Root (UK) Ltd* [1981] AC 557, 574. Apprehension that a party may disobey an order should not deter the court from making an order otherwise appropriate: there is not one law for the law-abiding and another for the lawless and truculent. When making an order, the court should ordinarily be willing to enforce it if necessary. The rule of law is not well served if orders are made and disobeyed with impunity. These

> propositions however rest on the assumption that the order made by the court is just in all the circumstances and one with which the defendant can and reasonably ought to comply, an assumption which ordinarily applies both when the order is made and when the time for enforcement arises. Since a severe financial penalty may be imposed for failure to comply with an enforcement notice, the main additional sanction provided by the grant of an injunction is that of imprisonment. The court should ordinarily be slow to make an order which it would not at that time be willing, if need be, to enforce by imprisonment. But imprisonment in this context is intended not to punish but to induce compliance, reinforcing the requirement that the order be one with which the defendant can and reasonably ought to comply. …"

The Facts

8. The defendants, to whom I shall for convenience refer as Ryan and Declan, are brothers. Ryan is 25 years old and Declan is 24 years old. They are the joint registered proprietors of Cwm Farm and carry on there a farming business through, as I understand it, a limited company called Cole Farms Ltd, of which they are the directors and the sole shareholders.

9. The defendants' parents, Anthony and Alyson, have farmed for many years in Pembrokeshire, but by 2015 Anthony's ill health had caused them to scale back their activities. The defendants have always wanted to farm in their own right and in this they have been supported by their parents. By early 2018 the defendants kept their own flock of goats on some land of which their parents had a tenancy. In the spring of 2018, having both attained their majority, they looked to take a new tenancy in their own name. However, they could not afford the increased rent that was being demanded and were given notice to vacate the land by the autumn. It was in those circumstances that the defendants bought what is now Cwm Farm. It was their intention to erect a structure suitable to house and milk the goats on Cwm Farm over the winter months.

10. Alyson's evidence is that on 23 October 2018 the defendants, with her help, submitted to the claimant an application for a determination as to whether the prior approval of the local planning authority was required in connection with the erection of an agricultural building ("prior notice application"). Having heard nothing from the defendant after 56 days, Alyson believed that work on the structure could commence under permitted development rights. In this she was mistaken: the proximity of the livestock to a protected building (a residential dwelling) meant that the 56-day rule did not apply. But it was in those circumstances that the defendants carried out development at Cwm Farm. The claimant does not directly contradict that evidence —it cannot, of course, give direct evidence about the sending of documents by the defendants—but it observes that it received neither a prior notice application nor the required fee until January 2019. At all events, the defendants do not say that they sent a cheque for the application fee, noted that the amount of any such cheque had not been debited, or made any efforts to enquire of the claimant what it was doing about the application.

11. In December 2018 the claimant received complaints from a member of the public alleging that unauthorised development had taken place at Cwm Farm. The matter was investigated by the claimant's Chief Planning Officer, David Popplewell, who identified the following breaches of planning control:

    1) Without planning permission, constructing: (a) an agricultural building comprising a goat shed, cattle shed, parlour and dairy ("the shed"); (b) a pole barn; (c) a solar array; (d) a wind turbine; (e) a static caravan with porch; and (f) a farm track;

    2) Without planning permission, making a material change of use of the land from agricultural to a mixed use of (a) agricultural, (b) siting of a static caravan with an attached porch, and (c) storage.

12. According to Alyson, Anthony and one of the defendants met with Julian Wood, an enforcement officer with the claimant, on 4 January 2019 and he advised that the prior notice application had not been received. Ryan states that he explained the urgency of the situation to Mr Wood, who "agreed that the shed was clearly for agricultural purposes and that there was a reasonable expectation that planning permission would be granted."

13. The prior notice application was submitted, or resubmitted, on 11 January 2019. On 15 January 2019 the claimant sent an Invalid Application Notice, confirming that prior notification was not the correct procedure as the development was not permitted development under the Town and Country Planning (General Permitted Development) Order 1995 as the proposed building would house livestock and was within 400m of a protected building (a dwelling). As the Invalid Application Notice was not appealed, the claimant closed the file on 27 January 2019 and returned the cheque for the application fee.

14. Thereafter, Alyson and Ryan entered into communications with the claimant's officers with a view to regularising the planning position. She suggests that she was led to believe that she could expect a positive outcome. Whatever precisely may have been said, I have seen nothing to persuade me that Alyson was given false hopes or that anything was said that has any bearing on the present application. Mr Popplewell states: "The purpose of the meeting [between Alyson and two named council officers] was to ensure that the planning application to be submitted was valid and no commitment would have been given to the application achieving a positive outcome."

15. On 21 June 2019 the defendants submitted an application (reference 19/0317/PA) for retrospective planning permission for "an agricultural shed to house milking goats". The application was refused on 30 August 2019 for reasons of adverse impact on residential amenity, inadequate vehicular access and potential environmental pollution from waste water.

16. On 9 January 2020 the defendants made another application (reference 19/0987/PA) for planning permission for "Agricultural shed to house and milk goats and rear beef, construction of track and yard, siting of caravan for domestic welfare for owners and staff (in retrospect), extension to shed and siting of solar panels on shed roof and relocation of pole barn". The application was refused on 11 September 2020 for

reasons of adverse impact on residential amenity and potential environmental pollution from waste water.

17. In January 2021 the defendants, who had hitherto acted without professional assistance, instructed a planning consultant and a drainage expert to prepare a new application for planning permission.

18. On 10 February 2021 the claimant issued an enforcement notice under section 172 of the Act, requiring the defendants to remedy the breaches of planning control, as follows: (1) Demolish the agricultural building comprising the goat shed / cattle shed / parlour and dairy; pole barn; solar array; wind turbine; and caravan/porch structure; and permanently remove all of the resulting material from the land; (2) Apply a soil capping layer to the existing ground topography over the footprint of the agricultural livestock building to the following depths: 200mm - topsoil, 300mm – engineered soil or suitably graded subgrade lightly compacted: minimum slope of 8% to ensure surface water does not sheet off at high rates before filtering into the ground; (3) Permanently remove the static caravan from the land; (4) Permanently remove the farm track by covering the track with a soil layer to reinstate the land to its condition immediately preceding the unauthorised works; (5) Permanently cease the use of the land for the storage of vehicles, scrap, waste materials and remove all such stored material from the land. The period of compliance was three months (four in the case of the requirement for soil capping).

19. Declan appealed to the Welsh Ministers against the enforcement notice under section 174 of the Act. The sole ground of appeal was that the period for compliance with the enforcement notice fell short of what was reasonable: section 174(2)(g). The appointed inspector allowed the appeal on 28 July 2021 and substituted a period of nine months for compliance with all requirements. The Appeal Decision contained the following text:

> "6. Where an appeal is made on ground (g) alone, the Appellant does not make any case that the alleged development is lawful, or that planning permission ought to be granted for the development, or the requirement(s) of the notice should be varied. The Appellant will know that the notice will come into force in exactly the form it was issued. The only reason for appealing is to gain more time to comply.
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> …
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> 8. The Appellant made this appeal on the basis that the periods of 3 and 4 months specified on the EN would be insufficient time for him to appoint an appropriately qualified person to prepare a planning application, instruct a drainage engineer to attend the site and prepare a full drainage statement and submit a Sustainable Drainage System (SuDS) application to address the issues raised by Natural Resources Wales and Pembrokeshire County Council Pollution Officer.
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> 9. I understand the Council's view that the Appellant has submitted two planning applications previously, and in its

> opinion the drainage and pollution issues on the site are such that they may not be capable of being addressed. Nevertheless, it would appear that the Appellant was not adequately professionally represented at the time of the previously refused planning applications and he acknowledges that he had produced a 'relatively poor-quality submission with no professional guidance'.
>
> 10. It is clear that the Appellant has not fully understood the planning process which can often be very complex and intimidating, especially to those who are not professionally represented. The Appellant is willing to work with the Council and other bodies in an attempt to rectify matters through the future submission of a comprehensive planning application prepared by professional advisers. In my experience, preparing a detailed planning application to address the issues raised by the unauthorised development takes a lengthy period of time.
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> 11. In addition, at the time the second planning application was determined and the EN was served by the Council, the UK continued to be subject to significant restrictions in response to the Coronavirus/COVID-19 pandemic. I am also mindful of the fact that many of the restrictions continue to remain in place with many office workers and other professionals working from home and not able to travel freely or undertake their work in the same manner as the period before the pandemic. I am also concerned that the Council might have difficulty enforcing the notice if the current periods for compliance are not varied.
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> 12. The Appellant contends that a nine (9) month period for compliance would be reasonable, and I accept that this would be a reasonable and pragmatic period for the Appellant to commission the necessary work in preparing and submitting a planning application. Indeed, it would also provide the Appellant with an opportunity to provide added flexibility given the ongoing COVID-19 pandemic. I am therefore satisfied that a 9 month period would strike an appropriate balance between the competing interests."

20. Upon receipt of the enforcement notice, the defendants had instructed Agri Advisors, a specialist firm of solicitors dealing with agricultural and rural matters, to act on their behalf. Before me, it was suggested that the defendants had suffered from poor advice from Agri Advisors, namely not to appeal against the enforcement notice on grounds related to the planning merits. Although I am not privy to details of any advice given, I am unimpressed by the criticism of the defendants' former solicitors. It is clear that the appeal under section 174(2)(g) was intended to provide an opportunity for the defendants, with the necessary professional help, to prepare a new application for planning permission that would (it was hoped) address the substantive issues.

21. On 19 November 2021 the defendants made a further application (reference 21/0857/PA) for planning permission for the retention of the shed and the access track. Ryan explains: "We did not seek retention of the mobile home, the pole barn, a wind turbine or the storage of vehicles and scrap/waste including tyres, pallets, containers etc as alleged in the enforcement notice. Those items have been removed from the Farm."

22. The further application was refused on 15 November 2022. The reasons for refusal appear conveniently from the Officer's Report:

> "The agricultural building, due its close proximity to a residential dwellinghouse results in noise and odours which have a detrimental impact on residential amenity. The application site is accessed from a bridleway and it is considered that the increased vehicular movements associated with the development have a detrimental effect on the public right of way. The application fails to demonstrate that suitable surface water drainage can be provided and that the development would not have a significant detrimental impact on the River Cleddau Special Area of Conservation. The proposal fails to comply with the requirements of policies SP 1, SP 16, GN.1, GN.2 and GN.37 of the Local Development Plan for Pembrokeshire."

23. On 1 December 2022 Mr Popplewell and Peter Horton, a planning enforcement officer of the claimant, visited Cwm Farm and observed that none of the requirements of the enforcement notice had been complied with. They state that during the visit they spoke with the defendants and were not given any assurances that they intended voluntarily to comply with the requirements of the enforcement notice.

24. On 8 February 2023 the defendants each received a summons to attend Haverfordwest Magistrates' Court on a charge of failing to comply with the enforcement notice. On 9 March 2023 each defendant pleaded guilty to that charge and was fined £1,000.

25. Meanwhile, on 17 February 2023, before the issue of a claim form, the claimant filed an application for a mandatory injunction requiring compliance with the enforcement notice. After a consensual stay of proceedings, a claim form was filed on 31 May 2023. The application for interim relief was not pursued.

26. The defendants appealed to the Welsh Ministers against the refusal of application 21/0857/PA. The appeal was dismissed on 21 November 2023. The inspector rejected two of the three grounds of refusal given by the claimant (detrimental impact on residential amenity, and detrimental effect on the public right of way). However, he upheld the refusal of permission for the third reason; the relevant text in the Appeal Decision is as follows:

> "*The River Cleddau SAC [Special Area of Conservation]*
>
> 4. The agricultural building subject to the appeal application was in situ at the time of my visit. The appeal site lies in the catchment of the River Cleddau and around 800m from the

River Cleddau SAC. As a development that may lead to an increase in the amount of phosphorus which could damage the SAC, NRW [Natural Resources Wales] requested information regarding how manure would be stored and disposed and how pollution emanating from the development would be prevented and controlled.

5. The appellant submits a Manure Management Plan (MMP) accredited by a suitably qualified person. The MMP includes exporting manure to a farm in an area that also lies in the catchment of the River Cleddau SAC. NRW advise, should the land on which manure would be spread lie in the catchment of the River Cleddau SAC, an additional MMP would be required.

6. Further, in order to be able to conclude the proposed development would not have a likely significant effect on the SAC, there should be 'a robust and enforceable chain of custody … in place for the fate of manure from the site, controlling the location, beneficial use and method of land spreading.' Nothing is submitted to show that the land to which manure would be exported and spread is not within the catchment of the River Cleddau SAC. Nor is there a MMP for that land or an enforceable mechanism for ensuring appropriate disposal off site.

7 With regard to spreading manure at Cwm Farm, the MMP states phosphorus is absorbed by grass and red and white clovers, 'which utilise and thrive from phosphorous and potassium in farmyard manure.' NRW does not raise any concern in this regard and whilst this may be acceptable for the fields, according to the appellant's Drainage Plan the yards are permeable and 'water will soak down naturally.' This could include water contaminated by manure. The appellant has not addressed how pollution emanating from the development would be prevented and controlled. I cannot be certain, therefore, that phosphorous would not find its way into the SAC.

8. In the absence of an enforceable mechanism for the appropriate spreading and disposal of manure off site, or proposals for managing pollution emanating on site, I cannot conclude that the proposal would not have a harmful effect on the integrity of the River Cleddau SAC. I find, therefore, that the proposal conflicts with Policies SP 1, GN.1 (4) and GN.37 of the Pembrokeshire County Council Local Development Plan up to 2021, adopted 2013 (LDP).

…

19. SACs are afforded the highest level of ecological protection. Notwithstanding my findings regarding living

> conditions, drainage and the use of the bridleway, I am unable to conclude that the proposed development would not have an adverse effect on the integrity of the River Cleddau SAC. For the reasons given above and having regard to all matters raised, I conclude the appeal should be dismissed."

27. The defendants have very recently made[1] another application for planning permission. In his second witness statement, dated 29 July 2024, which I permitted to be adduced in evidence, Ryan explains the steps that have been taken to address the concerns expressed by the planning inspector. The number of livestock has been reduced in order to reduce the quantity of manure. The defendants have rented additional land, outside the SAC, where they intend to store the manure; no livestock is to be kept at the additional land. The defendants are offering an undertaking to adhere to their proposed manure management plan and to stock their land and the shed accordingly. Ryan states:

> "10. Our goal in submitting the new planning application was to address any previous issues raised when our past applications had been refused. We collated information from those applications and our appeal to the Welsh Government to ensure we had left no stone unturned. My brother and I wanted to satisfy the Council's concerns and demonstrate that we are willing to work in partnership with them to ensure that no breaches of planning control wilt happen in future. Of course, we have not yet seen the outcome of this application and I am sure that will depend on the outcome of the injunction proceedings."

28. For the claimant, Mr James told me that the new application is expected to be considered and determined by the Planning Committee in October 2024. On instructions, he told me that the claimant's officers remain concerned about the manure management plan. In particular, they have concerns over the security of the arrangements to move manure from Cwm Farm to the additional land and over what would happen in the event that the tenancy agreement for the additional land, which is currently for a fixed term until 1 October 2024, were to be terminated. There is also concern as to how manure will be kept and treated on Cwm Farm before it is removed. There is (it is said) a risk of leaching and of a significant impact on the SAC. The claimant's current view is that the application does not adequately address the planning inspector's concerns and that there remains a real risk of significant environmental harm.

29. I mention, finally, some of the personal evidence relied on by the defendants.

30. In his witness statement dated 2 April 2024, Ryan states:

> "19. … I was really hoping this [the appeal against the enforcement notice] would the final stage of the constant planning issues we have had, however, I understood the

[1] There was some question before me as to whether the fee has actually yet been paid. The claimant also says that there are some issues with the submitted plans. It has not been suggested that these matters are likely to be significant in the long run.

> inspector's concern and therefore since his decision, we been working towards reducing the number of animals housed and looking at purchasing more land so that we had control over our own manure produced.
>
> 20. Agriculture is an extremely difficult industry for young people to get in to. Despite all of the challenges in the current farming climate, my brother and I have decided that this is what we want to do. We have certainly had our fair share of obstacles, from having to relocate, to needing to restructure our business due to COVID 19. Nothing has been as traumatic as trying to achieve planning permission. Throughout the entire process it is clear that we have tried our best to cooperate and rectify any issues raised by the Council. The Council may allege that we had a wilful disregard for planning procedure, however, this is not the case.
>
> 21. A combination of naivety due to our age and necessity due to our circumstance has led us to where we are today. We have learnt from our mistakes and want to engage with the Council to regularise the planning for the Farm as well as build their trust to ensure we have fruitful relationship moving forward."

31. In his witness statement dated 2 April 2024 Declan states:

> "11. If we are required to take down the agricultural barn on the Farm, then it is quite likely that we will be crippled financially and forced to declare bankruptcy. I am 24 years old and my brother is 25 years old and all we want to do is try to build a successful agricultural business which is difficult enough with the existing challenges farmers face without a dispute with the Council in relation to planning permission.
>
> 12. I now look to the future wanting to build a life for my child. I do not want my child to grow up with any knowledge or awareness of this ongoing dispute and I just want to move on with my life. I will never be able to build something for my child's future without the Farm. With the benefit of hindsight, of course we would not have made certain decisions however both the welfare of animals and the optimistic expectation that issues were resolvable were a driving force in this.
>
> 13. I truly hope that this part of our lives can conclude as soon as possible as I would like to move on with my life. My brother and I are young men trying to make a success of an agricultural business in Pembrokeshire. Agricultural business already face challenges in Wales at the moment however I believe my brother and I have faced an immense amount of obstacles since setting up our business. We have faced numerous challenges throughout from being given a notice to quit from our previous tenancy to being unable to continue

> selling our produce due to loss of face to face contact during the COVID-19 pandemic.
>
> 14. I can categorically say that nothing has impacted us financially or emotionally as much as the battle to achieve planning permission. I am drained by the entire process and hope that matters can come to a mutually agreeable end."

32. In her witness statement, also dated 2 April 2024, Alyson states:

> "39. I know this is not my application but we as a family are so heavily invested in this situation that I have continuously referred to this application being ours. As a mother it has been extremely difficult to watch my sons go through this entire process. Our family's mental health and strength has been tested beyond its limits and there have been several instances where I have worried for their personal safety. We are not bad people, we were just naïve. Understandably recollections may vary however with the help of context and emails I believe that we can demonstrate that over the past 6 years we have not only tried to work with the Council to resolve the issues raised, but consciously made concessions along the way.
>
> 40. My sons are extremely hard working boys who just want to preserve agriculture in rural areas and progress their business in this extremely difficult industry. They have had an unimaginable number of obstacles put in front of them and undoubtably they will be stronger in the future. The enforcement notice on the shed and the lack of planning permission on the farm has been a noose around their necks for long enough. They cannot progress with their lives until it has been resolved."

Discussion

33. The relief sought by the claimant is an order that the defendants demolish the shed, apply a soil capping to the footprint of the shed, and remove the track to the shed by covering it with a soil later to reinstate the land to its previous condition.

34. The claimant's case as presented by Mr James is simple. Although the claimant is sympathetic to their position, the defendants have been for several years in breach of planning control, and the unauthorised development gives rise to a significant risk of environmental harm to the River Cleddau SAC. That risk can only be addressed by the removal of the shed, because while the shed remains in place it will be used for livestock. The application has been brought and pursued only after the defendants have been afforded the fullest opportunity to make their case through the planning system, and they have failed over a long period to comply with the terms of the enforcement notice. The claimant takes (it is said) a reasonable and realistic stance regarding the activation of the injunction, suggesting that work might be required to commence within three months and to be completed within six months.

35. These are powerful arguments. However, I have decided not to exercise my discretion by granting an injunction. I shall mention the main factors that I have taken into account, both for and against the grant of an injunction, in reaching this decision.

1) I have firmly in mind the guidance on the exercise of the court's powers given in *South Buckinghamshire D.C. v Porter.* Without disregarding the wider terms of the guidance, it is convenient to note Lord Bingham's remark at [29] in his speech regarding the reason for which the power was conferred: "to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for."

2) The defendants have never had permission for the erection of the shed or the construction of the track. If they initially believed that the development was permitted (and I cannot say whether or not they did), their belief arose from their own failure to take proper steps to communicate with the claimant. They have certainly known for more than five years that they have no permission for development.

3) However, I do not regard this case as involving flagrant disregard for planning control, inasmuch as the defendants have made genuine efforts to regularise the position and to obtain the necessary permission. Some of those efforts have been inexpert; like the planning inspector who determined the appeal against the enforcement notice, one has sympathy for the defendants in that regard. Latterly, the defendants have been able to make a successful response to some of the planning objections advanced by the claimant, though they have still not established that they can meet the environmental concerns.

4) I place some weight on the fact that the claimant, as the democratically elected body with responsibility for the relevant area, has decided to exercise its discretion to apply for an injunction. Further, I do not accept Mr Spurr's submission that the lack of evidence that the claimant has weighed in the balance the defendants' personal circumstances counts significantly against the grant of relief. First, Simon Brown LJ's judgment at [39] neither says nor means that the local planning authority's failure to take account of all relevant factors and adequately to address proportionality weighs against the grant of an injunction. Rather, it says that such failure will reduce the weight to be accorded to the fact that the democratically elected body has decided to apply for an injunction. Those are very different things. Second, on the facts of this case the matters relied on by the defendants in respect of their personal circumstances are very different from those that fell for consideration in *South Buckinghamshire D.C. v Porter*. In that case, the injunction would constitute a significant interference with the defendants' Article 8 rights; the question therefore arose whether the interference was necessary for the protection of the rights and freedoms of others. In the present case, it is by no means clear to me that any Convention rights are engaged by enforcement of planning control. The defendants have adduced some evidence about the hardship caused to Declan by the removal of the caravan from Cwm Farm, but that has nothing to do with the relief now sought. They give evidence of the strain that the planning process has placed on their mental health; again, that does not, in my view, indicate that the grant of an injunction would interfere with a

Convention right. Generally, the fact that the defendants have made sacrifices of time, effort and personal commitment in respect of the development does not seem to me to provide any good reason for declining to grant an injunction that would otherwise be justified.

5) Regarding the financial consequences to the defendants of the grant of an injunction, I make the following observations. First, the claimant has not sought to challenge the assertion that the removal of the shed would have severely adverse consequences for the defendants. Second, however, beyond the defendants' unchallenged assertion there is no substantial evidence of the likely financial consequences of the removal of the shed: no particulars have been given of the financial affairs of the farming business or of the limited company or the defendants personally. Third, no one is exempt from the obligation to observe planning control by the fact that to do so would cause financial detriment. Fourth, even so, I accept that the court can have regard to financial consequences when assessing whether it is just and proportionate to grant an injunction. In the circumstances, I give the point some, though limited, weight.

6) I see no real relevance in the complaints made about the claimant's handling of the matter over the years. If there have been failures of communication that have caused frustration or anxiety to the defendants, that is no reason not to grant an injunction that would otherwise be appropriately granted. As to the defendants' suggestion that they have on occasion been led to believe that a grant of planning permission would be likely, I make two points: first, if any such indication had been given, it would not entitle the defendants to act in breach of planning control when in the event permission was refused; second, it seems to me that this case provides an example of a not uncommon situation, in which the efforts of planning officers to assist applicants to make their application as strong as possible, in circumstances where an application would not be manifestly hopeless from the outset, is construed as an indication of likely success. Similarly, complaints about previous advisers—whether solicitors or planning consultants—are unpersuasive in fact and in themselves irrelevant. The one point that I am prepared to take from them is that the defendants have always had a genuine belief that there are no insuperable planning obstacles to what they have done and intend to do and that, to that extent, they have acted in good faith.

7) Mr Spurr submitted that the injunction being sought by the claimant (removal of the shed and of the track) ought to be refused because it is directed at the wrong mischief: neither the erection of the shed nor the construction of the track is inherently objectionable in planning terms, as neither operation threatened or caused environmental harm, and the other planning objections were rejected by the inspector; any problem relates to the use of Cwm Farm for livestock, which the claimant does not seek to restrain, no doubt because it is a permitted agricultural activity. Tempting though the submission is, I resist it. The inspector who dismissed the appeal against the refusal of planning permission in November 2023 was well aware that the shed does not itself present a threat of pollution. What was relevant to him and to the claimant was the purpose of the shed, namely to house livestock that will, by the

production of manure, present an environmental risk. As Mr James observed, it is because the shed, erected in breach of planning control, is used for livestock that the breach of planning control comprising its erection needs to be addressed. The defendants cannot be permitted to flout planning control, not least because of the potential environmental consequences were they to do so. Having said all this, I do accept that the injunction sought by the claimant would not prevent the defendants from having livestock on the land at Cwm Farm if they chose to do so.

8) However, without in any way belittling the importance of the environmental issue, where the local planning authority is asking the court to use its power to grant injunctive relief one is entitled to place the issue in some context. First, the reason why the enforcement notice was upheld was that the inspector was "unable to conclude that the proposed development would not have an adverse effect on the integrity of the River Cleddau SAC". He did not find, and the claimant has not sought to prove, that the defendants' activities have had or are having or even are likely to have such an adverse effect. Second, both the procedural history of this matter and the timescales for compliance suggested by the claimant tend to belie any contention that an injunction is required by way of an urgent intervention to prevent environmental harm. If the shed were required to be removed, the evidence shows no reason why it could not be removed within 28 days. The claimant's suggestion that six months might be allowed makes me question whether this is a case that truly calls for the court to exercise its jurisdiction to grant an injunction.

9) I am also entitled to have regard to the new application. Although Mr James has outlined what I take to be the preliminary view of the officers, the application has not been considered by the claimant itself and it does not appear that meaningful communications have yet taken place regarding the new manure management plan. Mr James submits, on instructions, that the application does not address the concerns identified in the inspector's decision in November 2023. However, it seems clear that the application at least purports or intends to address those concerns, whether it does so successfully or not. I do not know whether the application is likely to succeed; at present the odds seem, perhaps, against it. But it is not implausible to think that it might succeed.

Conclusion

36. In conclusion:

36.1 The defendants remain in breach of planning control and of the terms of the enforcement notice and are thereby committing an ongoing offence under section 179 of the 1990 Act, for which they are liable to repeated fines if they are prosecuted. Further, the claimant has the powers conferred by section 178 of the 1990 Act.

36.2 The defendants are required by law to comply with the enforcement notice. They are not entitled, and will not be permitted, to flout planning control by their pleas of hardship, anxiety or being hard-done-by by professionals or the local planning authority. Nor, despite this judgment, can they hope to remain

in breach of planning control by seeking to draw out the planning process endlessly.

36.3 However, I am satisfied that the defendants have genuinely sought to address the planning objections to their development, that they continue to do so, and that they have a pending planning application that cannot be regarded as having no real prospect of success. I accept that an injunction requiring them to remove the shed and track at this stage would probably cause them serious financial harm and, in addition, would be likely to be dispositive of the pending planning application by rendering it nugatory. It would be possible to formulate an injunction in such a way that it would not come into effect until after the pending application had been determined. That, however, would raise the question whether this was, after all, a case requiring the court's intervention. The evidence does not persuade me that the present situation is causing or likely to cause environmental harm (as the inspector's decision makes clear, that is not the test for planning permission, of course) or that the claimant believes that it does.

36.4 In the circumstances, I decline to grant an injunction.