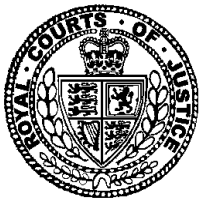

Neutral Citation Number: [2023] EWHC 1917 (KB)

Case No: KB-2022-003798

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 July 2023

Before:

Dexter Dias KC
(sitting as a Deputy High Court Judge)

- -

Between:

Mark Randolph Dyer (1) **Clare Alexandra Pandora Dyer (2)**	**Applicants/ Claimants**
- and –	
Patricia Webb (1) **David Aymer Small (2)** **Susan Eileen Small (3)** **Dr Andrew Cross (4)**	**Respondents/ Defendants**

- -
- -

Mr R. Barraclough KC (Mr N. Bacon KC for judgment) and Mr M. Davies (instructed by **Lombard Legal**) for the **Applicants/Claimants**
Ms A. Proferes (instructed by **Charles Russell Speechlys**) for the **Respondents/Defendants**

Hearing date: 11 May 2023

- -

Approved Judgment

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

.....

DEXTER DIAS KC (sitting as a Deputy High Court Judge)

Dexter Dias KC:

1. This is the judgment of the court.

2. It is divided into four sections to assist parties and members of the public to follow the court's line of reasoning.

Section	Contents	Paragraphs
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III.	**Issue 2: Injuncting acts of harassment** *Limb 1: Serious issue to be tried* *(a) Early allegations* *(b) Graham Hurst* *(c) March 2020 incident* *(d) Mr Baker* *(e) Velvets Cottage* *(f) Agents* *Limb 2: Adequacy of damages* *Limb 3: balance of convenience* *Conclusion on Issue 2*	105-140

§I.

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INTRODUCTION

3. This is an application for interim relief in the form of an interim injunction, following an application notice dated 26 October 2022.

4. The case involves a long-running, acrimonious and seemingly irresolvable dispute between neighbours in a village in the Surrey Hills. The village is Brook, which is near Albury, somewhere between Guildford and Cranleigh. It is a truly beautiful part of the country and is designated an Area of Outstanding Natural Beauty ("AONB"). The result of that classification is that property development is subject to planning restriction. This has been at the root of the trouble between several residents of Brook Lane.

5. The applicants Mr and Mrs Dyer moved into the area in May 1997. As one of the respondents whom they seek to injunct puts it:

> "Since the Dyers moved into this property they have built a swimming pool with three outbuildings, an outbuilding by the hedge bordering Brook Lane, a sunken well, a stable block and a helicopter landing pad. I feel that any further suburbanisation of what is a rural area of outstanding natural beauty should be resisted at all costs."

6. Village life in England is one of the glories of this country. But here a different side to its underbelly has been on view. While it is said that an English person's home is their castle, here it has become, in a most unedifying way, a battlefield.

7. The case raises important questions about the nature, extent and limitations of certain of our fundamental freedoms under the law.

(a) Parties

8. The applicants are Mark Randolph Dyer and Clare Alexandra Pandora Dyer. They were represented at trial by Richard Barraclough KC and Mark Davies of counsel. Mr Bacon KC stood in for Mr Barraclough to take judgment.

9. The respondents are Patricia Webb, David Aymer Small, Susan Eileen Small and Dr Andrew Cross. The respondents are represented by Ms Proferes of counsel. The court is grateful to all counsel for their input in this important case.

10. A note on terminology: in skeleton arguments and during the course of submissions, the applicants have also been called "claimants" and the respondents "defendants". This difference is immaterial. It merely reflects their statuses in any forthcoming substantive claim.

(b) Residences

11. Mrs Dyer acquired a property on Brook Lane called Cheynes in 1997. She also owns a field and an adjacent cottage. There is a nearby tenanted property called Velvets Cottage, owned by a company called Velvets Cottage Limited. Mrs Dyer is the sole director and Person of Significant Control. Since moving to Brook, Mrs Dyer has sought to develop her properties. She has made over 50 separate planning applications. There is some dispute about the extent of the time Mr Dyer spends at Cheynes. However, for the purposes of this application, I do not find that the dispute is significant.

12. Mrs Webb is 77 years old. Her property is called Chennels East. It adjoins Velvets Cottage. Mr Small is 81; Mrs Small is 78. They live at Quillet on Brook Lane. It adjoins the Cheynes paddock or field. Dr Cross is 63. He is a general practitioner. He lives at Cannons. This property is opposite Cheynes.

(c) The application

13. The applicants seek an interim injunction (strictly injunctions) to restrain the defendants from acts of alleged harassment, pending the resolution of their claim for permanent injunctive relief and financial loss resulting from the harassment they claim to have suffered. As put in of the particulars of claim:

> "the planning process was being used by the Defendants for an ulterior and illegitimate purpose, namely to target and to oppress the Claimants and cause them distress." [55]
>
> "the Defendants and each of them have engaged in a deliberate campaign of obstruction to the Claimants' planning applications whatever their merits." [64]

14. It is alleged that there has been a diminution of value of Mrs Dyer's properties caused by the respondents' harassment. Accordingly, she claims damages for harassment to reflect the loss of value of the properties of 18 per cent, namely £1,332,000. The applicants' claim is to restrain the respondents from harassing them and for damages under sections 1 and 3 of the Protection from Harassment Act 1997 ("the 1997 Act"). When this case was listed for hearing of the interim relief application, no substantive claim had been served. That is why the original draft order said, "up to and including a trial of the intended action". There was no action.

15. Then very late in the day, a signed claim form was provided to the court. It was dated 9 May 2023, that is, two days before the interim hearing. The accompanying particulars of claim are dated 7 May. It is stated by the applicants that the terms of the particulars of claim supersede the terms of the draft order in respect of the relief sought. In this evolving situation, the court must pin a point in time to assess the application. In fairness to the applicants, I am prepared to judge the application on the particulars of claim, coming late in the day as they do. However, as Ms Proferes accurately states, the claim has not been issued with the court. Thus this is a pre-action application. This is of significance for the legal test that applies. I have indicated to parties that I will deal with the issue of pre-issue injunctions in due course (see §IV).

16. The interim relief application was issued on 27 October 2022 and was originally listed to be heard on 23 January 2023 with a time estimate of 1 hour. The hearing was vacated because the respondents wanted more time to make submissions. The parties wrote

jointly to the court on 20 January 2023. On 6 February, the matter was listed for hearing on 15 March 2023, but this had to vacated because the applicants could not attend on that day. On 10 February, the court listed the hearing for 11 May 2023 with a time estimate of 1 day. This is how the case came before me on 11 May. This is the resulting judgment.

(d) Rival cases

17. In short, the applicants' case is that this is, as Mr Barraclough put it, "sad" litigation. But it has been made inevitable and ultimately triggered by the "cumulative effect" of the objected to behaviour by the respondents over "many years". The conduct objected to has allegedly been direct through overt acts of harassment and indirect by using the planning process as a "device" to upset and harass the applicants. This conduct is serious and not a "mere nothing". There is an allegation that the respondents recruited a neighbour of the applicants to harass them. He is David Leslie Baker and lives in the Crossing on New Road, Albury Heath. His garden adjoins Cheynes. Mr Baker is said to have "set fire to the boundary". It is said that his actions have been "influenced" by the respondents. All of this has caused much distress, particularly to Mrs Dyer. The nature and extent of the misconduct by the respondents has moved "from village politics to tortious harassment". The urgency of the application for an interlocutory injunction comes from the "cumulative impact" of the misconduct. It cannot await trial to resolve, such is its deleterious impact on the applicants. Their son Max says in his statement:

> "More recently, I have seen the effect that the harassment of the Defendants has had on my mother. I have been party to numerous conversations around the dinner table when the subject of the harassment that both my parents, and especially my mother have suffered at the hands of the Defendants and especially Mr and Mrs Small and Dr Cross." [7]

18. Mrs Dyer refuses to leave the country due to worry about the property and lives in a permanent state of worry. Therefore, it is necessary and proportionate for the court to restrict the respondents' right to make planning objections because their objections have nothing to do with the intrinsic merits of the application, but are motivated by personal, vindictive and strategic reasons. As such, their conduct is oppressive and unreasonable. The respondents are members of a residents' association, the Brook Residents' Group ("BRG"), which is said to have been created or at least used as an instrument to oppress and distress the applicants, and Mrs Dyer particularly.

19. The further impact on Mr and Mrs Dyer is that these neighbour disputes have to be declared upon sale and are likely to impair the value of the properties, as the properties have allegedly acquired a "stigma" (B1512, §19.15). The applicants need respite and the protection of the court.

20. The respondents' case is that this is an unwarranted intrusion into their fundamental rights. Through this application, the applicants seek to impede open and lawful objections to planning applications which at all times they have made through the proper legal channels via the planning process. As such, the injunctions sought constitute a serious restriction of their rights guaranteed under the European Convention on Human Rights ("ECHR"): the freedom of expression for the purposes of Art. 10 and the freedoms of assembly and association under Art. 11. The allegations of harassment

are overblown, misconceived, unevidenced and stale. They are, as Ms Proferes put it, simply "odd". The application for interim relief should be roundly rejected.

(e) Core allegations

21. The particulars of claim allege that the respondents pursued a course of conduct amounting to:

> "harassment of the Claimants and which the Defendants knew or ought to have known amounted to harassment of the Claimants contrary to sections 1 and 3 of the Protection from Harassment Act 1997 that was calculated to cause and is causing the Claimants alarm and distress." [65]

22. Specifically, it is alleged that Mr and Mrs Small have pursued a course of oppressive and harassing conduct against the applicants since the 1990s. Since 2016, Mrs Webb and Dr Cross have joined them. The first incident appears to have been in May 1998. To put it into context, this was a year after Tony Blair was first elected Prime Minister. That is how long ago. The unlawful conduct was originally said to include:

- Mr Small attending Cheynes unannounced and scaring Mrs Dyer;
- Mr and Mrs Small accosting Mrs Dyer and making unkind, alarming and distressing remarks to her;
- Mrs Webb and the Smalls harassing Mrs Dyer's tenants, Richard Scarisbrick and his family, such that they did not renew their tenancy of Velvets Cottage;
- the respondents influencing the applicants' other neighbour, Mr Baker, who has been the subject of two injunctions restraining him from harassing the applicants and who is currently subject to undertakings to that effect, to harass the applicants on their behalf, including drafting correspondence for Mr Baker in respect of a spurious complaint about the height of their hedges;
- the respondents together unreasonably acting in concert to object to various of Mrs Dyer's planning applications in respect of Cheynes, Velvets Cottage and land near Pond Lane in circumstances where they did not object to one other's planning applications, nor those of other neighbours making similar or larger planning applications in the neighbourhood;
- Dr Cross making a spurious high hedges complaint.

(f) Terms of injunction sought

23. As specified in the particulars of claim, the terms of the interim relief sought, which is different from the framing in the draft order, are:

> "An injunction restraining the respondents, whether by themselves, or by their agents, or howsoever otherwise, from:
>
> a. trespassing onto all or any part of the land known as and situate at Cheynes, Brook Lane, Albury, Guildford, Surrey GUS 9DH;

b. intimidating, threatening or pursuing conduct which amounts to harassment of the Claimants, together or separately, their children, their tenants, servants, agents, visitors or independent contractors;

c. acting in concert, coercing or soliciting others to make unmeritorious objection to the Claimants' planning applications in an oppressive manner;

d. acting in concert, coercing or soliciting others to make unmeritorious high hedge complaints or any other similar objection or application with the relevant local planning authority."

24. It is this formulation that was before the court as the hearing started. I make a number of preliminary observations about this.

25. **First**, at paragraph 12, the word "spurious" is used about the complained of objections. Following paragraph 71, the terms of the relief sought use the word "unmeritorious". I regard them as being interchangeable.

26. **Second**, given that the draft particulars have been served, the focus of the court will be on the application for interlocutory injunctions in support of the pleaded case. I am prepared to grant the applicants a degree of latitude in fairness to them. As indicated, I will say more about the pre-action nature of the application in due course.

27. **Third**, when I say injunction, in fact there must be applications for an injunction against each respondent. They do not necessarily stand or fall together.

28. **Fourth**, when asked by the court what the evidence of trespass was, the court was told that the applicants no longer pursue the trespass allegation. This was news to Ms Proferes as she had not been told of the development. This is a curious state of affairs. I would expect as a matter of professional courtesy that Ms Proferes should have been told immediately. In any event, Paragraph A of the injunction sought is removed.

29. **Fifth**, as to Paragraph B, the applicants do not seek relief in respect of their children. So that goes.

30. **Sixth**, as to Paragraphs C and D, once more, when asked what evidence exists of coercion, the applicants withdrew that allegation.

31. **Seventh**, and in conclusion therefore, the court will rule upon the matters that remain: Paragraph B as amended; Paragraph C as amended; Paragraph D as amended.

(g) Issues

32. There are two prime questions for the court:

Issue 1: whether to grant injunctive relief against planning objections – in other words, an injunction that interferes with the respondents' Convention rights under the ECHR;

Issue 2: whether to grant an injunction against other acts of harassment – through a classical *American Cyanamid* injunction (*American Cyanamid Co. v Ethicon Ltd.* [1975] A.C. 396 HL).

33. Each issue can only be determined by the assessment of a number of sub-issues. I will detail these in the appropriate section, more proximate to the ensuing analysis for ease of comprehension and after an examination of the governing legal principles. Before I move on, I make two further observations.

34. **First**, the nature and extent of the acrimony is reflected in the bundle for this interim hearing: it extends to 1809 pages plus skeletons, plus schedules for costs. The costs incurred in this case, even at this early stage, exceed £300,000. It is necessary to examine the background and history to set the application into sufficient context. However, let me be clear about my approach to evidence for the purposes of this judgment. It is heavily informed by that of the Court of Appeal in *Re B (A Child) (Adequacy of Reasons)* [2022] EWCA Civ 407. The court stated at [58] that a judgment "not a summing-up in which every possibly relevant piece of evidence must be mentioned" (Proposition 4). Therefore, I focus on what has been essential to my determinations in this case. However, I emphasise that as part of my review, I have considered it all.

35. **Second**, I will examine the applicable legal principles that govern these applications at the outset of each of the two principal sectional subdivisions. That is because the law is subtly and importantly different in respect of the restraint of the two forms of conduct alleged.

§II. Issue 1: Injuncting planning objections

36. This part of the application proposes an interference with the Convention rights of the respondents. There are three limbs to such an application. I will explain the genesis of the test shortly, but to state it briefly:

a) The "threshold" test (my term): a modification of the *American Cyanamid* serious issue to be tried test;

b) Whether damages are an adequate remedy;

c) The balance of convenience.

Limb 1: Threshold test

37. The threshold test sets out what the applicants must prove at this stage and why. It is no part of the court's function of this phase of the litigation to definitively resolve conflicts of evidence on the written evidence as to facts on which the claims of either party may ultimately depend (*White Book 2023*, Vol. 2, paragraph. 15-8). To recapitulate, it is claimed that the respondents have acted unreasonably and in concert to object to various of Mrs Dyer's planning applications in respect of Cheynes, Velvets Cottage and land near Pond Lane. The prime allegation is framed by the applicants' solicitors in this way on 13 December 2022 as the respondents engaging in "harassing our clients through the abuse and manipulation of the Guildford Borough Council

planning system." In a letter dated 16 December 2022, the solicitors maintained that the respondents were engaging in

> "bad and cruel behaviour, acting in concert with each other to the detriment of our clients to harass, intimidate and interference with our client's planning applications."

38. Mr Dyer states that his wife has been "victim of a malicious campaign of harassment in an attempt to devalue her assets." It was succinctly put by Mr Barraclough as the planning process having been used "as a device to harass the applicants." The applicants submit that this basis alone is sufficient for the grant of an interlocutory injunction.

39. The respondents submit that this is a vexatious application. The conduct complained of does not and cannot amount to harassment. A reasonable person in possession of the same information would not consider that objecting to planning applications would amount to harassment under s.1(2) of the 1997 Act. The respondents have objected to the numerous applications made by Mrs Dyer because they genuinely oppose her development plans. This was not to cause Mrs Dyer distress. It is their right to object to planning applications relevant to them and their home area that they consider inappropriate to the quality and ambience of the locality.

40. Such are the rival arguments in short. I turn to the law.

(a) Legal framework

41. To understand the prevailing and pertinent legal framework, it is necessary to consider the forensic evolution of the law. The current procedural basis for granting interlocutory injunctions is to be found in Part 25 of the Civil Procedure Rules ("CPR"). It provides:

> "**Orders for interim remedies**
>
> CPR 25.1
>
> (1) The court may grant the following interim remedies—
>
> (a) an interim injunction
>
> 25.1.3
>
> Interim remedies are discretionary and the discretion is exercised judicially within a framework of case law.
>
> 25.1.11
>
> In dealing with an application for an interim injunction, the court must seek to give effect to the overriding objective of dealing with the matter "justly and at proportionate cost".

42. Historically the common law did not recognise a tort of harassment. Notwithstanding this, in *Khorasandjian v Bush* [1993[QB 727, the plaintiff was granted an interim

injunction restraining the defendant from harassing her in anyway, in circumstances where they had never been married and had not cohabited. Thus, they were not intimate partners typically recognised by the courts for protection at that time. The Court of Appeal in turn upheld the injunction. However, the decision was overruled in part by the House of Lords in *Hunter v Canary Wharf Ltd* [1997] AC 655. Thus, the effective protection from harassment of non-spouses and cohabitees was once more called into question. There was growing impetus to protect people, and especially women, from what is called "stalking". Statutory intervention come in the form of the Protection from Harassment Act 1997. It provides:

> "1 **Prohibition of harassment**.
>
> (1) A person must not pursue a course of conduct—
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other.
>
> (2) For the purposes of this section **…** the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
>
> (3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows —
>
> (a) …
>
> (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
>
> (c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

43. It should be noted that the term "harassment" is not definitively defined in the statute, but for the purposes of this application, there is sufficient statutory assistance from s.7. This provides:

> "7 **Interpretation of this group of sections.**
>
> (1) This section applies for the interpretation of sections **…**
>
> (2) References to harassing a person include alarming the person or causing the person distress."

44. Sitting as I do in the Family Division and the Family Court, I am very familiar with the concept of harassment for the purposes of non-molestation orders, for example. It is certainly not necessary that violence is threatened or inflicted. Psychological harm is also highly relevant. Thus at trial, the applicants will have to prove that the conduct

they seek to injunct is harassment in that it alarms or distresses the applicant. I have no hesitation in finding for the purposes of ss.3(b) that the planning objections were made under statute and derivative planning policies and under an "enactment or rule of law". This basis is unavailable to the applicants. Therefore, they must rely on unreasonableness for the purposes of ss.3(c). This means that at trial the burden will be on the respondents to prove on a balance of probabilities that their conduct was unreasonable. However, this is an application for interim relief. What is the test at this stage?

45. The court is not making findings of fact. It is deciding whether there is a proper basis to grant interim relief. In respect of restraining the right of the respondents from making planning objections, expressing one's view about a planning application and discussing it with others potentially engages important Convention rights under the ECHR. Section 3 of the Human Rights Act 1998 ("HRA") requires me to read and give effect to legislation compatibly with Convention rights so far as this is possible. Section 6 mandates, unless compelled by statute, that I must not act incompatibly with Convention rights. Thus the powers under the 1997 Act and the rules of court in the Civil Procedure Rules ("CPR") must be interpreted compatibly with Convention rights. But what are the relevant rights?

> **Article 10 of the Convention – Freedom of expression**
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.
>
> **Article 11 of the Convention**
>
> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others …

46. Here the public authority would be the court imposing the restraint through injunction. Were the making of the objections by the respondents unreasonable? Such a voicing of objection inescapably is an exercise of the freedom of expression under Art. 10. In its interpretation of Art. 10 of the Convention, the European Court of Human Rights has held that:

> "freedom of expression constitutes one of the essential foundations of [democratic] society, one of the basic conditions for its progress and for the development of every [person]" (*Handyside v. the United Kingdom*, Application no.5493/72, 7 December 1976, § 49).

47. The court has emphasised on several occasions the importance of this Article, which is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or are a matter of indifference, but also to those that offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (*Handyside*, ibid.; see also *Observer and Guardian v. the United Kingdom* Application no. 13585/88, 26 November 1991, §59*).*

48. The right to freedom of peaceful assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (*Djavit An v. Turkey*, 2003, § 56; *Kudrevičius and Others v. Lithuania [GC]*, 2015, § 91). The applicants' case is that it is unreasonable for the respondents to object to their planning applications and to discuss together what to do about the applicants' planning applications because this amounts to "acting in concert" with a view to devising "tactical" or "spurious" objections. The respondents submit that the 1997 Act was not intended to be used as a means to, as Ms Proferes put it, "repress freedom of expression or association". To support that proposition, the respondents rely on the judgment of Eady J in *Huntingdon Life Sciences v Curtin* (quoted in *DPP v Dzuirzynski* [2002] EWHC 1380 (Admin), at [33]:

> "The legislators who passed that Act [he is there referring to the 1997 Act] would no doubt be surprised to see how widely its terms are perceived to extend by some people. It was clearly not intended by Parliament to be used to clamp down on the discussion of matters of public interest or upon the rights of political protest and public demonstration which are so much part of our democratic tradition. I have little doubt that the courts will resist any such wide interpretation as and when the occasion arises, but it is unfortunate that the terms in which the provisions are couched should be thought to sanction any such restrictions."

49. However, in the intervening 20 years since *Dzuirzynski*, there is no doubt that injunctions have been granted under the Act to prevent certain protests. I therefore review the proper approach to this issue by asking a series of structured questions.

50. **First**, are the respondents seeking to exercise their rights under Art. 10 and/or Art. 11 for the purposes of Art. 10? I have no doubt that "expression" includes the right to hold and express opinions. Expressing an objection to a planning application prima facie must fall squarely within the Convention right. Meeting or communicating to express those rights whether informally or through a residents' association plainly comes within Art. 11.

51. **Second**, will the relief sought involve the public authority, here the court, interfering with the rights? Clearly, yes, if the court grants the injunctive relief.

52. **Third**, is the restriction prescribed by law? Yes, as it is in accordance with legal principle and authority.

53. **Fourth**, is the restriction in pursuit of a legitimate aim? Here it is said to protect the applicants from maliciously created distress and also to safeguard their rights under Art. 8 (right to respect for private and family life).

54. **Fifth**, is the restriction necessary in a democratic society? Here the court can use the four-part test enunciated by Lord Reid in *Bank Mellat v Her Majesty's Treasury (No 2)* [2013] UKSC 39. Lord Reid stated at [74]:

> "It is necessary to determine, (1) Whether the objective of the measure is sufficiently important to justify the limitation of a

> protected right. (2) Whether the measure is rationally connected to the objective. (3) Whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective. (4) Whether balancing severity of a measure's effects on the rights of the person to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter".

55. **Sixth**, is there a rational connection between the means chosen (i.e. the proposed order) and the aim in view? Another way to look at this question is to ask whether the injunction furthers the protection of the applicants from distress. I find that it is certainly capable of doing so.

56. **Seventh**, are there less restrictive alternative means available to achieve that aim? Undertakings from the respondents might suffice, but despite correspondence between solicitors, the respondents are not prepared to agree to undertakings. They say they have done nothing wrong. We now come to the crux of the argument.

57. **Eighth**, is the aim of the proposed order sufficiently important to justify interference with a fundamental right? Does the order strike a fair balance between the rights of the individual and the general interest of the community, including the rights of others – here the rights of the applicants? These questions, it seems to me, involve a careful and nuanced examination of the competing factors. I must do so in the correct evidential and persuasive burden context. Section 12(3) of the HRA creates a vital modification to the standard test for an injunction under *American Cyanamid*. Section 12 provides:

> "**12 Freedom of expression.**
>
> (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> (2) …
>
> (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
>
> (4) The court must have particular regard to the importance of the Convention right to freedom of expression."

58. In *Cream Holdings v Banerjee* [2004] HL 44, the court set out the legislative context. It held that "likely to establish" is stricter than "serious issue to be tried", the *American Cyanamid* threshold test. Generally, success must be more likely than not. The court considered the appropriate test for restraining Convention rights in *Birmingham City Council v Asfar & ors* [2019] EWHC 3217 (QB). Mr Justice Warby (as then was) stated that s.12(3) *"applies to any application for prior restraint of any form of communication that falls within Article 10 of the Convention".* In *Tigere v SSBIS* [2015] 1 WLR 3820 (SC), Baroness Hale at [33] cites *Bank Mellat,* thus applying the *Bank Mellat* proportionality rubric to interferences with the Article 2 Protocol 1 right to education. I have no doubt whatsoever that it applies to interferences with Arts.10

and 11. This must be read alongside the structure of obligations under the 1997 Act. The court reduced this interlocking matrix of burdens to a set of propositions and shared it with counsel, who adopted the analysis.

59. In consequence, there are three propositions:

(1) At trial, it will be for the respondents (as defendants) to prove on a balance of probabilities that their conduct in making planning objections was reasonable (if it is found to amount to harassment et cetera);

(2) For interim relief, the applicants must satisfy the court that it is likely that they (as claimants) will establish at trial that "publication will not be allowed" (planning objections being "publications" for the purposes of s.12 HRA 1998);

(3) Therefore, at this stage, the applicants must satisfy the court that it is likely that respondents/defendants will not prove reasonableness at trial.

(b) Arguments about unreasonableness

60. The core of the argument is that the planning objections have been used as a guise to further the campaign of vilification, harassment and distress that the respondents have engaged in. To show that the objections were malicious and unreasonable, the applicants rely upon two principal planks.

61. **First**, the report of Mr Adem Mehmet. He provides opinion evidence about the nature and pattern of the respondents planning objections and his opinion about what may in truth lie behind them. He is thus presented to the court as an expert. As Mr Barraclough put it, “Whether the planning objections amount to harassment depends on the report of the planning consultant.”

62. **Second**, the nature of the objections themselves as evidenced, for example, by the high hedges complaint by Dr Cross. The point is that, as Mr Barraclough continued, if the objections were “anything other than a personal vendetta they would not be restricted to the applicants planning applications”. Therefore, the court can say that there is evidence from the planning experts that describes the difference of approach by the respondents to other planning applications compared to those of Mrs Dyer. Thus, it supports the argument that the planning process has been used to harass the applicants. In due course, I will examine both elements.

(c) Adem Mehmet

63. Mr Mehmet is a planning consultant. He provided the applicants with a report dated 2 May 2023. Given the central importance placed on his report by the applicants, it merits quoting in a little detail. He states that there exists a:

> “deliberate pattern of behaviour by the Defendants, whereby the C proposals and their proposals alone attract vehement opposition, and comparable schemes or even those with greater impacts do not merit any objections, and in some cases, positive comments of support from some of the Defendants.

> This is evidenced in the sustained campaign of objections mounted by the Defendants in almost every application the Claimants make. In my view, the most serious of which is the proposal reference 20/P/02042, when the level of objections made both in writing and directly to the planning committee persuaded them to refuse planning permission for a development plainly in accordance with the development plan, and against the advice of professional planning officers.
>
> In my opinion the unavoidable conclusion is that for whatever reason, the Defendants hold a particular and personal disdain for the Claimants, which has sadly manifested in a deliberate campaign of obstruction to their planning applications, irrespective of the merits of those schemes.
>
> This concludes my assessment of all applications made by the Claimants since 2006. I have observed occasions when the Defendants raise arguable planning matters. At the same time, there are numerous and repeated instances of non-planning issues being raised, including suggestions that plans are inaccurate or untruthful, disruption or even harm to persons from construction traffic, exaggerated claims about harm to AONB or Green Belt where the Council raise no such concerns, and numerous claims about excessive noise.
>
> In my opinion, the most concerning example is the events that transpired in relation to application 20/P/02042, where the level of objection was wholly disproportionate to the scale of the proposal and culminated in the Planning Committee overturning the Officer recommendation and refusing planning permission against their advice. It appears highly probable that this was the direct result of intervention by the Defendants
>
> …
>
> Finally, returning to the original scope of my instructions, I am asked whether the primary focus of the Defendants objections to the Claimants applications is personal to the Claimants or grounded solely in land use planning matters. In my opinion, the actions of the Defendants are indeed motivated by their personal grievances with the Claimants. This is the inescapable conclusion reached from a comprehensive review of all of the evidence.
>
> Yours sincerely
>
> Adem Mehmet"

64. The difficulty with the applicants' position was vividly clear during oral argument when the court asked counsel for the applicants to clarify Mr Mehmet's status and the nature of his conclusion. On the question of whether he was independent, Mr Barraclough did

his best. He stated that Mr Mehmet previously "had advised the applicants in planning matters but was independent". I cannot see how this bold submission survives Mr Mehmet's own words from his report:

> "I have previously advised Cs [Mr and Mrs Dyer] in relation to various planning applications made by them at their properties Velvet [sic] Cottage and Cheynes Cottage on Brook Lane, Guildford, as well as directly advising their architectural team in preparing the required plans and drawings, and on appeal matters in respect of some of these applications."

65. All of this was done to help the applicants secure the planning permissions they wished for. By any objective standard, the professional history of this witness is inextricably connected to advancing the best interests of the applicants. It seems to me that it is artificial to present Mr Mehmet as independent and impartial. He is not. I emphasise none of this is a criticism of Mr Mehmet. He was given a brief and he fulfilled that brief. The concern of the court is about the presentation of a person so obviously lacking in independence as an independent expert.

66. I turn to the nature and substance of his analysis. Mr Barraclough was asked by the court whether there is evidence to support the claim that the decision of the planning committee in respect of the objection that Mr Mehmet found to be "the most concerning example" was objectively wrong. This was application 20/P/02042. Counsel conceded that there was no such evidence. He then submitted that "it doesn't matter that the objections by the respondents may be correct because the process is being misused."

67. This is a puzzling submission. The logical consequence is that if the respondents had made objectively valid objections, nevertheless because they were allegedly "misusing" the planning process, this could amount to harassment. I am bound to say that I find such an argument problematic. Particularly at an interim stage when the applicants' case rests on demonstrating to the requisite interim standard an unlawful animus behind the objection. That is because the whole basis of the applicants' case is that the objections are "spurious", that is, misconceived and without sound basis, but simply made to harass the applicants. Yet in respect of the planning objection, deemed by Mr Mehmet to be "the most concerning example", there is no evidence that the Planning Committee was wrong in rejecting the application. Thus, no evidence whatsoever that the respondents' objections were not soundly based and lacking substance in the merits of the planning issues engaged. How then can an objectively meritorious objection be said to be spurious? How can it be said to be oppressive and unreasonable?

68. What is the consequence of all this? I find that Mr Mehmet's opinions about the concerning and disproportionate nature of the objections to carry limited weight. I emphasise that I do not exclude or entirely reject his evidence at this stage. But his clear lack of independence, along with the fact that there is no evidence to support any suggestion that the Planning Committee was wrong in its conclusion about this application affects the weight the court can safely attach to his opinions. He is not impartial, or at the very least, there is real and credible appearance of partiality.

69. There are numerous comparable situations one can imagine. To take just one: if, for instance, a lawyer were advising a party in litigation in the Federal Court in the United States, and the question in proceedings in this court were about the proper interpretation

of US Federal law, it would be unacceptable to have that same lawyer as an "independent" expert advising this court on the meaning of the Federal law of the United States. Just postulating the example exposes the flaws in the applicants' present position. It was open to the applicants to instruct an independent expert. They chose not to do so. They must bear the forensic consequences of that choice.

(d) Dr Cross's high hedges complaint

70. In the draft particulars of claim, it is stated that Dr Cross made a "spurious" high hedge complaint. It is described as follows at [27-30] of the Particulars:

> "On 21 January 2021 the Fourth Defendant [Dr Cross] made a complaint to Guildford Borough Council in respect of allegedly high hedges on the boundary of Cheynes. The Claimants dispute the basis of the Fourth Defendants high hedges complaint as spurious and aver that reducing the height of the hedge would have no material improvement on the 4th D's property the Cannons.
>
> The high hedges complaint was made at about the same time as the Second and Fourth Defendants objected to application 20/P/02042 (infra) on 23 December 2020 which the Claimants suggest indicates how they were acting together."

71. What the draft particulars fail to mention is that the complaint was determined in Dr Cross's favour. Mr and Mrs Dyer appealed. There was then an inspector who looked at the complaint "de novo" – that is afresh. The decision of the inspector was sent out on 10 March 2023. The inspector concluded that:

> "6 Cannons is a detached house south of Brook Lane. The appeal hedge comprises a row of Leyland cypress trees that have been well maintained at about 7.9m high from the base of the stems. The branches and foliage knit together to form a barrier to light and access. It is on the opposite side of the single carriageway Brook Lane to Cannons and extends across the full width of the frontage of Cannons. It continues for some a distance either side.
>
> 23 The AHH indicates that the current height of the hedge is highly likely to cause an unacceptable loss of light to the garden and habitable rooms of the complainant's property. I also consider the hedge is a serious visual intrusion into the field of view from Cannons. I therefore conclude that taking these together the hedge adversely affects the reasonable enjoyment of the complainant's property.
>
> 27 Balancing the interests of the Parties I conclude that the effect on the reasonable enjoyment of Cannons outweighs the interests of the hedge-owner taking particular account of privacy and visual amenity. I conclude that action to

> reduce the height of the hedge is appropriate under the Act.
>
> Conclusion: the harm caused by the hedge outweighs other factors and that remedial action is justified."

72. The inspector found that the amount by which the hedge must be reduced in height should been altered slightly from the council's decision. But it must still be reduced from around 8 meters in height to 4.9 meters, instead of to the 4.3m meters decreed by the council. When asked about this matter, Mr Barraclough, no doubt upon instructions, maintained that the complaint by Dr Cross was "spurious". This is a highly revealing stance taken by the applicants. It means that despite the lawful process having been followed by Dr Cross, and despite both the Council and the planning inspector having upheld his complaint, the applicants stubbornly maintain that this was a spurious complaint on a basis not properly explained to the court, except perhaps that it was motivated by malice. Nevertheless, the inspector found that the Mrs Dyer's high hedge was highly likely to cause an unacceptable loss of light to Dr Cross's garden and also the living rooms in the Doctor's property. Further, Mrs Dyer's hedge was "a serious visual intrusion into Dr Cross's field of view".

73. It becomes very difficult to understand how this complaint, one of the key allegations relied upon by the applicants, can credibly be said to be spurious. All the evidence points to the fact that it was not. The applicants in seeking interim discretionary relief, have a high duty to bring relevant facts to the attention of the court. Yet they failed to inform the court about the outcome of the high hedge complaint. I regard that as a significant omission and illustrative of the approach of the applicants to this application. One has to recall that they have shifted their targets; alleging trespass, then withdrawing it; seeking protection for their children, then withdrawing it; alleging acts of coercion, then withdrawing it. The fact that the applicants have now sent a Pre-Action Protocol ("PAP") letter to the Secretary of State prior to a possible application for judicial review takes matters little further for them evidentially. There is no evidence that the complaint by Dr Cross was oppressive or unreasonable. All the evidence points uniformly in the exact opposite direction.

(e) David Leslie Baker

74. Mr Baker lives in the general vicinity and is known to the respondents. The particulars of claim allege at paragraph 12D that the respondents have "influenced" Mr Baker by drafting correspondence for him in respect of a spurious high hedge complaint. If this is the high hedge complaint of Dr Cross, then the court at this stage is not satisfied that there is evidence that it was a spurious complaint. This associated allegation falls away. I will deal with the other aspect of the alleged enlisting of Mr Baker to harass the applicants in Section III.

75. There is a further suggestion that Mr Small was somehow acting in concert with Dr Cross during the planning inspection. When the inspector visited, Mr Small was very visibly "chopping up wood with a large hand axe and later a chain saw". However, it is accepted that Mr Small was on his own property while he was doing this. He was in his car port. This adds nothing to the applicants' case. It is an example of how actions of the respondents are interpreted by the applicants in a dark and sinister fashion.

(f) Oppressive and unreasonable conduct

76. I cannot see how on any sensible or credible basis it can be maintained that these objections were devised to cause distress or were vindictive. Feelings have been running high in the area. Mrs Dyer wants to develop her land. The respondents broadly object to her plans as not in harmony with the nature of the village and the AONB. Mrs Dyer is perfectly entitled to try to develop her property. But in a democratic society, the respondents must be able to exercise their freedom of expression to object and to gather ("assemble") and message or talk ("associate") to discuss their objections. But with an important limitation. If they are simply, spuriously, spitefully and maliciously doing so to cause distress to the applicants, and especially Mrs Dyer, then that would be a potential basis for the law to step in. One gains support for this approach from the decision of this court in *Dowson v Chief Constable of Northumbria* [2010] EWHC 2612 (QB). There Simon J at [142] set out the elements of a successful claim in harassment:

> '(1) There must be conduct which occurs on at least two occasions;
>
> (2) which is targeted at the claimant;
>
> (3) which is calculated in an objective sense to cause alarm or distress;
>
> (4) which is objectively judged to be oppressive and unacceptable;
>
> (5) What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs.
>
> (6) A line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: 'torment' of the victim, 'of an order which would sustain criminal liability."

77. I take "calculated" to mean, as interpreted in criminal statutes, "likely". The parties agree. This is not a requirement of deliberation or malice in Limb 3. Where the question of the "tactical" or spurious nature of the conduct comes in is at Limb 4, where the conduct is oppressive and unacceptable, and then again at Limb 6, where the conduct becomes a "torment", something akin to conduct that would sustain criminal liability. Is objecting to a planning application conduct of that ilk? I find it difficult in the circumstances of this case to so conclude. Mrs Dyer may well be upset, frustrated and even angry at an objection to her planning application. Many people are. But can this really be elevated into the kind of mental "torment" that would justify criminal proceedings and sanction?

78. I turn to the question of oppressive and unacceptable conduct. I can conceive that should the evidence indicate that the objections were in fact made maliciously that this could amount to oppressive and unacceptable behaviour. I remind myself that this is an interim application. I do not at this stage determine the matter finally. I apply the interim test: given this is a very significant interference with Convention rights, have the applicants established in this hearing that it is likely at a future trial that the respondents will not prove reasonableness of conduct in making objections? I find that the applicants have not so established. In fact, they have not come close to doing so.

79. The evidential basis upon which the claim of deliberate infliction of distress is grounded is flawed and fundamentally weak. It is unsustainable to maintain that the high hedges objection was "spurious" or unmeritorious, as claimed in PAP letter, and maintained by counsel in argument. I can place little weight on the opinions of Mr Mehmet. He is not independent. He has not the appearance of impartiality. There is no evidence that the objection he was most concerned about was in fact anything other than valid and thus meritorious. The objective facts beyond his opinions do not come anywhere close to establishing that these objections were as Mr Barraclough put it "tactical". If anything, the weight of the evidence clearly points to the fact that the respondents have deeply held, sincere and genuine reservations about the nature and extent of the developments sought by Mrs Dyer. This is a relevant factor.

80. In *City of London Corporation v Samede* [2012] EWCA Civ 16, the Court of Appeal at [40]-[41] held that one of the factors to take into account in deciding whether people be subject to restriction of Convention rights is whether they "believe in the views they are expressing". That was a protest case involving the Occupy Movement. But I am clear that the principle applies with equal force in this case. The respondents are entitled in a democratic society to differ from Mr and Mrs Dyer. This is the purpose of the planning process. It exists in part to provide a regulated method of dispute adjudication. There is no credible or reliable evidence before the court that the respondents have been abusing the system or covertly using it as a device to inflict harm on the applicants as opposed to simply holding strong contrary view about what they want for development in their village resting as it does in an Area of Outstanding Natural Beauty. Indeed, there is supporting evidence that identical points of objection were raised by the parish council and other individuals. Moreover, there were other applications by Mrs Dyer that these respondents did not object to that were nonetheless refused.

81. As indicated, the respondents belong to a residents' association. The Brook Residents' Group was founded in 2005. It is claimed by Mr Dyer that the BRG was established for the purposes of scuppering the applicants' development aims. As he puts it:

> "It is the local residents group and I believe the vehicle and means by which the Defendants conspire together to obstruct not only our development of our property, but also other independent developments in the area which do not have any direct effect on the members."

82. Yet the applicants were invited to join the group. This characterisation of the BRG is at odds with a social media message from Mr Small on 16 May 2022, so before this application was made:

> "Greetings All. In 2005 a number of Brook residents came together to form the Brook Residents' Group (BRG). Its objectives were simply to encourage social and neighbourly activities for local residents and to preserve and enhance the countryside around us. It could be claimed that this excellent WhatsApp group has, to an extent, superseded the role of BRG. Partly for this reason and partly through lethargy we have not held an AGM for a few years. However, there are a number of significant topics that need to be discussed, not least the future of BRG itself, and it therefore seems sensible to hold an AGM.

> It will take place in the Barn Church at Farley Green on the 22nd June at 8pm. All members of this group are encouraged to attend and if anybody has any subject that they would like to be aired perhaps they would let me know. [email address provided]. An agenda will be circulated before the meeting. Best wishes."

83. Dr Cross puts it this way:

> "The Brook Residents Group was set up following a meeting of various local property owners which the Second Defendant organised. The Group was established at a time when we were all suffering significant disturbance from the Claimants and their late-night parties and frequent helicopter flights. It made living on Brook Lane awful. The Group was established to encourage neighbourly and social activities and in an attempt to have better engagement with the planning officers."

84. Thus, neither Mr Small nor Dr Cross make any mention of the planning applications by the applicants. Indeed, Dr Cross exhibits at APC1 a copy of a letter which he as Chair of the group at the time sent to all members when it was established. This letter makes clear the purpose of the group and also evidences that the group has concerned itself with issues other than those relating to the planning applications of the applicants. The BRG currently has 22 members representing 15 properties. Other members of the BRG are not the subject of this application.

85. There is no doubt that within the bundle there is evidence of members of the group speaking together about objecting to the applicants' planning applications. There is also evidence of Mr Small writing on behalf of an elderly neighbour, the 91 year-old Mr Taylor, to make such an objection. At paragraph 54 of the particulars of claim it is alleged that:

> "it is the fact that the Claimants own the land in respect of which the application is being made which dictates whether an objection is made."

86. While it is factually correct that Dr Cross has objected to 14 of Mrs Dyer's planning applications, he has supported one of Mrs Dyer's planning applications, which casts a somewhat different light on the suggestion that he is a core conspirator in the campaign of vindictiveness and it is the ownership by Mr and Mrs Dyer that produces the objection. It becomes increasingly difficult for the applicants to demonstrate that the objections by the respondents were motivated by malice or were made for spurious as opposed to genuine reasons. It seems to me that disputes such as these should be ventilated and resolved through the designated planning system, including appeals and resorting to the planning court structure where permitted. But the use of the Prevention of Harassment Act 1997 to fundamentally interfere with the freedom of expression and freedoms of assembly and association in respect of planning objections strikes me as a legal turn the court should be wary of making. Conceivably, there may be cases of obvious and flagrant maliciousness or oppressiveness that may merit such a step. That is not this case, as the pleaded example of the high hedges complaint makes absolutely clear.

(g) Conclusion on Limb 1

87. To summarise: on the evidence before me, the key weaknesses in the applicants position on Issue 1, the restraint of planning objections, are four-fold:

88. **First**, as clarified in the particulars of claim, the applicants' case rests on the fact that the objections are spurious and unmeritorious. Yet, when the court asked whether the objection "of greatest concern" to the purported expert is unmeritorious objectively, the answer is that there is no evidence that it was. There is no evidence that the respondents' objection was not valid in planning terms. There is no evidence that the Planning Committee decision was not correct in rejecting the application.

89. **Second**, given that the applicants have failed to establish that one of the two marquee examples was unmeritorious or spurious, the court turns to the other complained of objections. What is the evidence that the decision of the Planning Committee in respect of those objections were wrong or invalid? No such evidence has been put before the court. Thus, there is no evidence that the other objections were unmeritorious.

90. **Third**, one tests this analysis by turning to the other identified marquee example – that of the high hedges complaint. Dr Cross's complaint was upheld by the council. It was then independently upheld by the Inspector. There is no evidence that the decision of either decision-maker was wrong. There is no evidence that the objection by Dr Cross was unmeritorious. To understand how flawed the approach of the applicants is, one has to look at the framing of it. It is said that the reduction in hedge height would have "no material impact on the improvement in the light" in Dr Cross's property. Yet the inspector has concluded exactly the opposite. The court far prefers the inspector's independent assessment to the unevidenced claim by the applicants.

91. **Fourth**, therefore, the applicants must rely on the opinion of the expert they have chosen to put before the court on the pattern of objections. At this interim stage, and without hearing any evidence whatsoever, it is impossible to say that the applicants are likely to show that the respondents' objections were unreasonable, unmeritorious or maliciously motivated (in other words, that at trial the respondents/defendants are unlikely to show that their objections were reasonable – I have set out the structure of the burdens previously). The applicants had the opportunity to instruct an independent expert. They chose not to. The underlying materials in respect of those applications have not been put before the court. They have not been explored or examined in evidence. The court cannot place any significant weight on the claims of a professional who has previously been instrumental in advising and assisting the applicants in previous planning applications.

92. All in all, this is a sorry state of affairs. The applicants have the burden at this point of proving to the court on balance of probabilities that the respondents will not prove reasonableness at trial. I judge that the applicants have come nowhere close to proving this. Therefore, on the first limb of the test to interfere with and restrain Convention rights, what I have called the threshold test, the applicants fail.

93. I turn to the questions of adequacy of damages and balance of convenience. I note in doing so that as Lord Goff said in *R. v Secretary of State for Transport, Ex p. Factortame Ltd (No.2)* [1991] 1 A.C. 603, HL, that the points made by Lord Diplock in *American Cyanamid* on this matter may properly be described as "guidelines". Thus,

Lord Diplock's speech should not be read as intending to fetter the broad discretion conferred on the court by the Senior Courts Act 1981 s.37.

Limb 2: Adequacy of damages

94. The applicants' case is that damages would fail to address the mischief caused by the respondents inasmuch as their conduct has left the applicants, and particularly Mrs Dyer, feeling distressed and anxious.

95. Here, I find that the position is clear. The applicants have clarified that there is no imminent planning application they intend to make. Thus, there is unlikely to be any application prior to the substantive trial. However, should an application be made, even though none is anticipated, they seek to prevent the respondents from objecting. It seems to me that if there were to be an objection that was ultimately deemed spurious or unmeritorious, the applicants could be compensated in damages for the distress caused. It is of note that in the latest edition of the *Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases* (16th edition), Chapter 4 sets out the quantification of awards for psychological and psychiatric damage. Mrs Dyer's distress and indeed any inflicted on Mr Dyer could be adequately compensated in damages. If there were a diminution in the value of Mrs Dyer's property as a result of a further spurious objection from now to trial, that could be quantified and compensation sought. Indeed, quantification of the alleged diminution in property value has already been made by the applicants' property expert Patrick Moyles. The applicants provide no reason why Mr Moyles could not do so again. The applicants have simply asserted that damages would be inadequate as a remedy for them. They have failed or failed sufficiently to explain why.

96. Further, I find that given that the respondents are homeowners with property of significant value, they would be in a position to pay damages for any loss caused by the refusal to grant an interlocutory injunction. As Lord Diplock stated in *American Cyanamid*, the adequacy of damages available to the applicant will normally preclude the grant of interim relief. That being the case, I do not need to proceed to consider the adequacy of damages to compensate the respondents should the interlocutory injunction be granted.

Limb 3: Balance of convenience

97. It is where there is a doubt about the adequacy of damages that the balance of convenience arises. I have encountered no such doubt on the facts of this case. Nevertheless, I consider the question of balance of convenience. To do so, the court must consider all the relevant circumstances of the case.

98. The use of the word "convenience" here reflects s.37(1) of the Senior Courts Act 1981, where it is stated that an injunction may be granted if it appears to the court "just and convenient to do so". The balance of convenience test is better described as the "balance of the risk of doing an injustice", raising the question: "which course carries the lower risk of injustice" *(N.W.L. Ltd v Woods* [1979] 1 W.L.R. 1294, HL, at p.1306 per Lord Diplock). As stated in *National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Practice Note)* [2009] UKPC 16, the test is reducible to one of the balance of risk of doing an injustice. The court "has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to

what extent) if it turns out that the injunction should not have been granted or withheld (as the case may be)." The basic principle is that the court "should take whatever course seems likely to cause the least irremediable prejudice to one party or the other."

99. The applicants' case is that the grant of injunction would cause no irremediable prejudice to the respondents, but would give substantial comfort to the applicants pending the outcome of the (envisaged) claim. In favour of grant is the fact that the applicants are prepared to give the respondents a cross-undertaking in damages. I find that this is a material consideration (*White Book 2023* at §15.12, p.3031).

100. Against grant, it seems to me that should the respondents be prevented from making an objection to a planning application that is then granted, that has the capacity of causing them significant prejudice. It might prove difficult to undo the grant of permission as a result of their failure to lodge objection. But the court cannot lose sight of the fact that what is being proposed is drastic interference with the Convention rights of the respondents. The Supreme Court has recently provided guidance on such issues.

101. In *DPP v Ziegler* [2021] UKSC 23, the court gave clear guidance on the approach to proportionality where Arts. 10 and 11 are engaged. This was a protest case. But the underlying principles identified by the court remain instructive. As a result of *Ziegler*, this court in *Gitto Estates Ltd t/a Horizon Properties v Persons Unknown* [2021] EWHC 1997 (QB), held at [27]:

> "damages are highly unlikely to be an adequate remedy where the respondent is at risk of suffering breaches of Articles 10 and 11."

102. While the *Gitto* decision is not binding on this court in the way a Court of Appeal decision is, I find it highly persuasive. A key question in the decision about whether to grant an injunction that restrains Convention rights is the question of the proportionality of the interference. The respondents complain that in their skeleton the applicants did not address the question of the proportionality of the proposed interference with the respondents' rights at all. This is true. Indeed, when Mr Barraclough began his oral submissions, the court asked whether it was accepted that the Convention rights of the respondents were engaged. He replied that they were not. Indeed, this was the first submission of substance made on behalf of the applicants. It was only after further exploration by the court that, quite properly, the point – obvious and inevitable – was conceded. The Convention rights of the respondents are plainly engaged. Nevertheless, the submissions made orally about proportionality by the applicants were unconvincing. It amounted to Mr Barraclough submitting that the "impact on the claimants in all respects has been such that relief should be granted so they don't have wait until trial." Set against this is the inescapable fact that should injunctions be granted, the respondents would be at risk of claims of violation and enforcement. There is the risk of arrest and breach or contempt proceedings. This would, I emphasise, be to their due to their making objections to planning applications through the lawful channels.

103. It strikes me as clear where the balance of convenience lies. It lies strongly in favour of refusing the injunction. I have considered the totality of factors and do not find that the matter is finely balanced. I find there is a clear and strong weight of factors in favour of refusing the application. Therefore, I do not need to consider the preservation of the status quo, which is only relevant where there is doubt. There is none.

Conclusion on Issue 1

104. Thus on Issue 1, the injunction sought by the applicants is refused and the application dismissed. But I emphasise that this is only one basis upon which an injunction is sought. The bases do not stand or fall together. Therefore, I turn to the second basis and Issue 2.

§III. Issue 2: Injuncting acts of harassment

105. This part of the applicant is governed by *American Cyanamid* in its classical formulation. It sets out a tripartite test:

> (1) Is there a serious question to be tried? If the answer to that question is "yes", then two further related questions arise; they are:
>
> (2) Would damages be an adequate remedy for a party injured by the court's grant of, or its failure to grant, an injunction?
>
> (3) If not, where does the "balance of convenience" lie?

106. The first question indicates a threshold requirement. A number of key principles can be derived from the speech of Lord Diplock in the case, which provide important guidance to the court:

> "Principle 3
>
> It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on the written evidence as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.
>
> Principle 5
>
> It was to mitigate the risk of injustice to the claimant during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction."

107. The grant of an interlocutory injunction is a very important matter as a defendant can be sent to prison for breach (*Rochdale BC v Anders* [1988] 3 All E.R. 490). I examine each of the three constituent limbs in turn.

Limb 1: Serious issue to be tried

108. Lord Diplock's tenth principle states that the court must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. This not a prima facie test. *American Cyanamid* substituted a lower threshold test. Lord Diplock said that, in addressing the threshold test, it is sufficient if the court asks itself: is the applicant's action "not frivolous or vexatious"? Is there "a serious question to be tried"? Is there "a real prospect that he will succeed in his claim for a permanent injunction at the trial?" (principle (11)). These may appear to be three subtly different

questions. It has been said that they are intended to state the same test (*Smith v Inner London Education Authority* [1978] 1 All E.R. 411, CA, at p.419, per Browne LJ).

109. In their skeleton argument at 12 A – 12D, the applicants list all the issues the court at trial is likely to need to resolve. But the listing of issues is not the same as identifying why they or any of them have a real prospect of success. The way it is put by the applicants is that "the Claimants contend that their evidence demonstrates that there is a serious question to be tried and that they have a real prospect of succeeding in the claim" (Skeleton, §14). It is assertion without supporting argument.

110. The respondents submit that there is no serious issue to be tried on the harassment claim. It is as vexatious claim. The conduct was not unreasonable. It does not come anywhere near the threshold for establishing harassment. Thus, there is no realistic prospect of success for the purposes of the Limb 1 test. The individual allegations are evidentially weak and come nowhere close to being sufficient for interim relief. I now move on to consider the various allegations made in approximate chronological order.

(a) Early allegations

111. In their particulars of claim, the applicants rely on a number of conversations between the Smalls and Mrs Dyer between 1998 and 2006. These were principally about their dim view of Mr Dyer and asking Mrs Dyer why she was still with him. There appeared to then be a lull from 2006 to about 2016-17.

112. Given the long interval between those events and the more recent incidents complained of, I find these deeply historic events to be of limited value, and especially since in terms of the spectrum of allegations of harassment that come before these courts, they are towards the bottom end of the scale of severity. These were not threats of violence. They amount to conversations that Mrs Dyer claims were unpleasant and upsetting. For example, in 2000, the giving to her of sartorial advice about wearing long skirts and frilly shirts. Allegedly. In 2002, Mr Small allegedly spoke to Mrs Dyer in the William IV public house without invitation. That was alleged to be an act of harassment. In 2016, there was allegedly another conversation with Mr Small in a shop in the next village, where he said that he had heard that she had divorced Mr Dyer. All this gives something of the flavour of what is being alleged.

(b) Graham Hurst

113. Moving forward to 2018, there is an allegation involving a person called Graham Hurst. It is put this way by the applicants:

> "In September 2018 the First Claimant had cause to apply for an injunction restraining one Graham Hurst from harassing the Claimants or anyone else lawfully on the claimants property the allegation is that on an afternoon in April 2018, Mr Hurst drove his Land Rover motor car directly at the First Claimant and on the evening of 25 August 2018, drunkenly accosted and abused the Claimants and their family upon their returning to Cheynes from the races by helicopter and drove his motor car at the Claimants and their family. Despite otherwise having no involvement in the incident, the applicants allege that the Second

> Defendant organised the creation of a "fighting fund" to pay for Mr Hurst's legal costs."

114. Mr Hurst is a local shepherd. Mr Small puts this matter this way:

> "Graham Hurst, a local shepherd who runs his flock of sheep on some land in the local area. The Claimants had purchased a small field on the edge of that land and in or around 2019 Mr Hurst saw a large executive helicopter land in that field very close to the pregnant ewes which he owned. He drove his Land Rover to the field and, angry that the welfare of his animals had been endangered, he remonstrated with the pilot and occupants, who included the Claimants."

115. Mr Hurst had to sell his hay crop to fund the action involving the applicants. Mr Small's son Robert gave money to Mr Hurst to make up the legal fees which Mr Hurst was ordered to pay to the applicants.

116. Mr Hurst is not party to these proceedings. The proceedings in respect of him have concluded. The dispute was about a very concrete and identifiable cause. There is no evidence that Robert Small was acting on behalf of his father Mr Small senior. The evidence that Mr Small senior was the organiser of the fighting fund is disputed. The actual incident did not involve any of these respondents. Thus, for the purposes of this application, given the antiquity of events and the fundamentally disputed nature of the evidence about funding, I find little that reliably supports the applicants' case for interim relief.

(c) March 2020 incident

117. The most recent act of *direct* and material harassment of either respondent appears to be that involving Mrs Dyer in March 2020. This was during the first lockdown. It is said to be during a conversation about ex-Prime Minister Boris Johnson. Mrs Dyer states as follows:

> "One of the most recent incidents with both Mr and Mrs Small occurred just after the former Prime Minister Boris Johnson was admitted to hospital as a result of him contracting Covid-19. This was in late March 2020. I was out walking our dogs and I happened to walk past both Mr and Mrs Small. As I was walking past, I made a comment to both Mr and Mrs Small to say that it was awful that Boris Johnson has gone into hospital with Covid-19. In response1 both Mr and Mrs Small started having a go at me about my husband Mark and the fact that some razor wire had been placed on top of the fence. Both Mr and Mrs Small said how dare we put up razor wire on the fence. I responded to say that I was aware that it was not very pretty and that the razor wire may have been put up incorrectly. I reassured Mr and Mrs Small that we were to sort the issue out and that they should not worry about it.

> Mr Small then went into a tirade about my husband Mark and started asking what his motive was for putting up the razor wire and stated that my husband Mark obviously had a mental problem for doing these things. Mr Small continued that the razor wire was needed because so many people do not like my husband Mark. He stated that it was clear that my husband Mark was clearly paranoid that someone was going to attack him and that was the reason for the razor wire being put up. I found all of these comments to be frightful. I carried on with my walk and ended up in tears and I rang up my mother-in-law for solace as I was crying as a result of the things that had been said to me by Mr and Mrs Small during my walk. I could not take the way in which Mr and Mrs Small talked to me about my husband Mark."

118. In her first statement Mrs Dyer states at §17-18 that Mrs Small 'had a go at her' in March 2020 and said things which distressed her. However, at §8 of her second statement, she accepts that in fact Mrs Small did not say anything to her at all on that occasion. Thus, the focus is on Mr Small's actions. Mr Small in fact wrote a letter of apology, stating that he was not particularly well disposed to the applicants due to the razor wire being put up around their property. Mr Small apologised in these terms: "I had no wish to alarm her [Mrs Dyer] and apologize if I did so".

119. Dr Cross wrote to the applicants to say that what Mr Small said was 'ungentlemanly'. Mr Small stated that in hindsight, although what he said was "not helpful", it was not ungentlemanly. Mr Small's letter to the applicants is said by Mrs Dyer to show "a lack of contrition" and overall can be "construed as a thinly veiled threat" since it mentions "traumatic events" from Mr Dyer's childhood that may make him extra sensitive. That the applicants are deeply suspicious about and wary of the respondents, can be seen from a further allegation involving a drone. Mr Dyer states that:

> "On and around November 2020 and again in 2021 and 2022, I noticed that drones were being flown over my wife's property. Given the issues that we have had with the Defendants and our privacy, these overflying drones made my wife feel anxious as it was another form of being watched and monitored. This is another example of the Defendants harassing my wife."

120. Yet a different story emerged in the applicants' solicitors' letter dated 3 March 2023, other neighbours, Mr and Mrs. Watkinson. The Watkinsons had objected to the installation of power cabling in Mrs Dyer's Ponds Farm paddock. The solicitors claim that this evidences that Watkinsons had been persuaded to "join in" the campaign of harassment and defamation. Of course, the Watkinsons are not party to this action, despite the terms of this letter. Furthermore, the letter states that the drones were flying over the applicants' property at the instigation of yet more neighbours, Mr and Mrs Kelly. It was not any of these respondents. The Kellys are not party to this claim either. However, all this demonstrates how sensitive and litigious the applicants appear to be and keen to lay matters of concern to them at the door of these respondents. The Watkinsons, as is their right, object to a power cable Mrs Dyer wishes to install in her paddock. They become accused through what must appear to them as a very daunting

and intimidating solicitors letter as being part of the campaign of harassment. The letter is drafted in a very strident way.

121. Returning to the 2020 allegation, I do not need to definitively decide the truth of what happened or did not happen in the Boris Johnson/razor wire conversation. But even taken at its highest, it is hard to understand how it is a constituent part of a course of conduct that amounts to harassment. The context is the undoubted fact that in this quiet village, Mr and Mrs Dyer had installed razor wire around the boundary of their property. Mr Barraclough submits that the "Cumulative impact on the claimants is building up and cannot await final trial." I cannot see how that submission remains intact given that the last act of alleged direct harassment against Mrs Dyer personally is over 3 years ago. Further, if there had been the course of harassing conduct complained of, I fail to understand how and why Mrs Dyer would approach her tormentors and strike up a conversation about Boris Johnson.

122. In conclusion, I find that the March 2020 incident adds very little of substance to the applicant's case for an injunction.

(d) Mr Baker

123. The allegation is now restricted to the respondents influencing (not coercing) Mr Baker into harassing the applicants. Mr Baker lives in a property that adjoins Mrs Dyer's home. The allegation is that:

> "At about 17:45 on 6 June 2021 Baker set fire to the fence marking the boundary between Cheynes and the Crossing, deliberately damaging the fence."

124. Ms Proferes points out that it is not pleaded that Mr Baker was influenced to set the fire itself. Yet in oral argument the applicants submitted that the behaviour of the respondents has "resulted in Baker setting fire to the boundary". It is put this way in the particulars of claim:

> "It will be the Claimants case that Baker conduct pleaded supra was but part of the continuum of activity designed and intended by him and the Defendants to intimidate and harass the Claimants and is attributable to the Defendants and each of them." [§40]

125. What is the evidence of such influence or instigation? For example, what is the evidence that Mrs Webb influenced Mr Baker? What is the evidence that Mrs Small influenced Mr Baker? Mr Small certainly suggested a firm of solicitors during the contempt proceedings and provided his email address to the court. Mr Small and Dr Cross wrote letters in support of Mr Baker during proceedings. The particulars of claim state:

> "The Fourth Defendant accepts having helped Baker write correspondence in breach of the interim injunction granted on 22 June 2021, (i.e., after the arson incident,) although he denies knowledge of its terms." [§39(iv)]

126. In his statement, Dr Cross states:

> "I have helped Mr Baker to write documents and letters, but simply as a "good neighbour", essentially a typist at his direction. I am now aware that there were two occasions when I helped prepare correspondence for Mr Baker which was in breach of the terms of his injunction, however I was not aware of the terms of the injunction at that time (and I do not think that Mr Baker understood them) and I simply did as he asked me to." (§86, B1030)

127. It is alleged that the respondents attended court on 21 November 2022 when the case against Mr Baker was listed for a case management hearing. It is alleged that on 28 February 2023 when Mr Baker accepted undertakings, one of the respondents – it is not said who - slammed a hand on the table and stormed out of court. What is the reliable evidence about who that person is?

128. There is a complicated series of allegations made by the applicants in respect of Mr Baker's situation. But one must keep a sense of proportion. While it is alleged that the respondents have influenced Mr Baker to set the fire, what is the evidence? I cannot find any reliable evidence to support that claim. Mr Baker is not party to these proceedings. The applicants having brought separate proceedings against him in 2000 and 2021 which have now been resolved by way of undertakings. Dr Cross and Mr Small's evidence is that Mr Baker suffers from dementia (as does his wife) and is vulnerable, and that members of the community including them have supported him from time to time at his request. At the hearing before me, it appears that there is no dispute that Mr Baker has these functioning difficulties. The applicants provide no credible basis for the allegation that the respondents "influenced", incited or instigated Mr Baker to harass them by setting the fire or in any other identifiable way. I fail to see how the allegations of the conduct of the respondents after the fire, even if true, amount to harassment of the applicants. I find that the allegation in respect of Mr Baker adds nothing of substance to the application for interim relief against these respondents.

(g) Velvets Cottage

129. It is alleged that in May 2022 Mrs Webb harassed the tenants at Velvets cottage Richard Scarisbrick and his family. The family had three dogs. They rented the property between 19 March 2022 and 19 November 2022 and moved out on or around 29 September 2022. Mr Scarisbrick claims that a fence installer hired by Mrs Webb threatened their dogs. Mrs Webb says that the fence installer told her that he was attacked by the Scarisbrick dogs, and she messaged Mr Scarisbrick's partner that their "vicious dog" attacked one of the fence installers. Mrs Webb duly reported this to the police. It is also alleged that her son Nicholas Webb went to the property, was rude and intimidating to Mr Scarisbrick's partner, and refused to leave for 45 minutes demanding an apology for his mother. It is further said that Mr and Mrs Small had a confrontation with Mr Scarisbrick's partner which left her upset. They deny this. Finally, on this topic, it is alleged at §50 of the particulars of claim that "This activity of those Defendants involved was designed and intended by them to harass the Claimants by interfering with their lawful tenants." What should the court at this stage make of all this?

130. First, I do not accept the respondents' point that Velvets is owned by a company and therefore these events cannot be relevant on broad *Canada Goose* principles (*Canada Goose UK Retail Ltd. v. Persons Unknown and another* [2020] EWCA Civ 202). Instead, it seems to me that since Mrs Dyer is the sole director and Person of Significant Control, it may be possible to harass her through acts of harassment directed at the property or those living there. The Scarisbricks moved out at the end of September 2022. New tenants moved in in November or December of last year and there have been no reported difficulties. So the only evidence about all this comes from Mr Scarisbrick. Yet he was not present. As confirmed in his statement, this happened on 24 May 2022 "without warning" while "I was not at the property and it was just my partner there" (§23). He said that his partner "informed me that there was an ugly confrontation where the installers threatened to hit our dogs in the head with fenceposts if they poked their heads through the fence."

131. Thus, his evidence is hearsay. While hearsay is admissible, it is of less weight than direct testimony. There is no evidence from Mr Scarisbrick's partner. Mrs Webb's son is not party to these proceedings. There is no evidence that he was acting at his mother's command. Even if he did demand an apology to his mother, that is not the same thing as his mother having incited her son to seek the apology. As Ms Proferes submits, this has not been pleaded in any event. There is no evidence that the fence installers were acting on Mrs Webb's instructions in their alleged response to the dogs. It seems that they were in the front line in terms of exposure to the dogs, which were reported to the police. Mr Barraclough states that "but for that behaviour, the Scarisbricks would have stayed on, at least in the medium term".

132. This is supported by Mr Scarisbrick's statement dated 8 February 2023. That states at §8 that "Our stay at Velvets Cottage was curtailed due to the peculiar behaviour that we experienced from the neighbour [Mrs Webb]". However, this must be compared with what Mr Scarisbrick said contemporaneously. He emailed the estate agent Ms Berman on 1 May 2022, one month after moving in in April 2022, that Velvets Cottage "doesn't meet our requirements" and that consequently they are looking for other properties in other areas. It should be noted that this email predates the incident with the fence installer and the dogs on 24 May and so that incident cannot have been the trigger for his decision to leave. As Mr Scarisbrick's evidence makes clear, there was a dispute about his dogs, to which he is closely attached. It renders his evidence far from totally impartial and disinterested. On balance, and for interim purposes, there is serious question about Mr Scarisbrick's evidence. The contemporaneous evidence is inconsistent with his later statement prepared for these proceedings. In *Onassis v Vergottis* [1968] 2 Lloyd's Rep. 403 at 431, Lord Pearce emphasised that contemporary documents are "always of the utmost importance".

133. Plainly there was some kind of disagreement about the Scarisbrick dogs. They were reported to the police by Mrs Webb. It is hard to perceive Mr Scarisbrick as an independent and impartial witness to all this. This was not directly about Mr and Mrs Dyer. Here there was a clear and identifiable point of contention which was the dogs. Thus, I find that events at Velvets Cottage add little to the application for interim relief.

(h) Agents

134. The allegation is that on 26 July 2022 Dr Cross threw legal papers in the face of a process server, Ray Finch. This allegedly was when Mr Finch sought to serve Dr Cross

with the applicants' evidence in response to the Dr Cross's high hedges complaint. Mr Finch puts it this way:

> "I said I have some legal documents for you and he asked who they were from, I explained the covering letter is headed Lombard Legal, he immediately exploded into a massive rage, shouting very loudly at me in a very very aggressive manor, stating, "I have told everyone to DO NOT come to my property with legal papers, I have also told them all that I will only except legal papers through the post, so bugger off my property "NOW" and do not return, you are also trespassing so get off my property". I advised him that I will need to leave the documents on the ground for your attention, l then threw them on the ground from my driver's window, photograph attached, and marked "A", in a very calm manner and he in turn picked them up and threw them at me through my open driver's window hitting my face, he did this with severe aggression and a glowing red face & still shouting at me at the same time. I then feared for my safety due to the rage and the aggression and swiftly threw them back on the ground and swiftly left the property."

135. This is an allegation about conduct towards an agent of the applicant, not the applicants themselves. Here is a process server going to Dr Cross's property. It is not Dr Cross seeking out the applicants for aggravation. Dr Cross has emphasised in his evidence that he told the solicitors Lombards that he would accept service by email and did not want people coming to his property. Whatever the truth of the incident, it is hard to conceive how this adds to the harassment of the applicants themselves.

Conclusion on Limb 1

136. I have examined the elements of the harassment claim and identified the weaknesses on the evidence presently before the court. I also consider them cumulatively as well as individually. I also consider all the other evidence in respect of the criticised objections. Taken together I cannot see how there is a realistic prospect of success that the applicants will establish a course of conduct amounting to harassment for the purpose of s.1 of the 1997 Act against any respondent, nor against the respondents as a whole. Thus, the application for interim relief on this basis fails on Limb 1. Nevertheless, I turn to Limbs 2 and 3.

Limb 2: Adequacy of damages

137. Broadly for the reasons previously given, I find that damages would be an adequate remedy. If there were acts of harassment between now and trial, the court could be in a position to quantify the damages that should be awarded. At trial the applicants seek two remedies: a permanent injunction and damages for acts of harassment and the loss of value in Mrs Dyer's property. It is hard to understand how damages would not be an adequate remedy in these circumstances. Further, as noted, the respondents are in a position to pay damages if ever deemed necessary. The application fails on Limb 2.

Limb 3: Balance of convenience

138. This application was issued on 26 October 2022, but there was no claim issued and draft proceedings were only served (not issued) on 5 May 2023. There had been in the intervening period regular chasing by the respondents' solicitors, most recently on 20 April 2023. Ultimately, the draft proceedings were served just 3 days working days before the hearing for interim relief. It is hard to comprehend the reason for such delay if the applicants were in real and pressing need of protection. No explanation was provided by the applicants during the course of the hearing.

139. For Issue 2 there is not a proposed restraint of Convention rights, but of behaviour that is unlawful in itself. There is sometimes the argument run that if the respondents are not intending to act unlawfully, then what is the prejudice of imposing a restraint on unlawful behaviour? That misses the point. An injunction imposed by the High Court is a serious matter. It is not a mere technicality. Breach may result in imprisonment. The need for its imposition must be clearly established by evidence since living under such a threat is a serious matter. Here, there is evidence before the court of the litigious nature of these applicants and the way in which they have litigated against people in several directions. Allegations are made such as the drone flying being the responsibility of these respondents when in other correspondence the drone is attributed to someone else entirely. Here it seems to me that the balance of convenience on the very specific facts of this case falls in favour of not granting the relief sought.

Conclusion on Issue 2

140. The application fails on each limb and is dismissed.

§IV. DISPOSAL

141. Ms Proferes was correct to point out both at the hearing and in her skeleton submissions that no claim has yet been issued. The law is clear. CPR 25.2(2)(b) provides:

> (b) the court may grant an interim remedy before a claim has been made only if –
>
> (i) the matter is urgent; or
>
> (ii) it is otherwise desirable to do so in the interests of justice;

142. On the question of urgency, the applicants have not established why this matter is urgent. It is highly revealing that the application notice was issued on 26 October 2022 and that the last act of direct act of harassment against Mrs Dyer herself was in March 2020 and still no claim has been issued. It is impossible to understand how urgency can be established.

143. That would be sufficient basis to dismiss a pre-claim injunction application subject to the interests of justice test at b(ii). That is why I have examined the case in such detail. I find no fall-back interests of justice basis to assist the applicants. The detail and depth of the court's consideration of these matters despite it being an interim application, reflects both the seriousness of the allegations and the importance of the Convention rights engaged and at risk of severe interference. As a result of the foregoing analysis, the court finds:

(1) Issue 1: the application for injunctions to restrain objections to planning applications made by Mr and Mrs Dyer or either of them fails on all three limbs and is dismissed;

(2) Issue 2: the application for injunctions to restrain other alleged harassment fails on all three limbs and is dismissed;

(3) There is no urgency for the purposes of pre-issue or pre-action injunctive relief;

(4) There are no interests of justice that justify granting pre-issue or pre-action relief.

144. Stepping back, I remind myself of the words of Sedley LJ in *Redmond-Bate v DPP* [2000] HRLR 249 at [20]:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having."

145. To fetter the autonomy of individuals in their exercise of free speech rights will require good cause. I judge that this court must be slow indeed to restrain protected and precious Convention rights and freedoms by injuncting genuine and meritorious objections to planning applications, even if they might upset the person applying to develop their property.

146. That is my judgment.