Neutral Citation Number: [2024] EWHC 602 (KB)

Case No: QB-2021-000778

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 March 2024

Before:

HUGH MERCER KC
(sitting as a Deputy Judge of the High Court)

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Between:

ST ALBANS CITY AND DISTRICT COUNCIL	**Claimant**
- and -	
(1) MR ANTHONY HUGH TAYLERSON	**Defendants**
(2) MR JAMES CASH	
(3) MR JOHN MASON	
(4) PERSONS UNKNOWN (OWNERS/OCCUPIERS OF CARAVANS OR OTHER FORMS OF RESIDENTIAL OCCUPATION SITUATED ON OR BEING BROUGHT ONTO THE LAND OR PERSONS UNDERTAKING OPERATIONAL DEVELOPMENT ON THE LAND WITHOUT A LAWFUL PLANNING CONSENT OR CHANGING THE USE OF THE LAND WITHOUT LAWFUL PLANNING CONSENT)	
(5) MR BYGG LTD	

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CAROLINE BOLTON (instructed by **Sharpe Pritchard**) for the **Claimant**
FELICITY THOMAS (instructed by **Portcullis Property Lawyers**) for the **FIFTH DEFENDANT**

Hearing dates: 23, 24, 26 January, 16 February

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Approved Judgment

This judgment was handed down remotely at 10.30am on 15 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HUGH MERCER KC

HUGH MERCER KC sitting as a Deputy Judge of the High Court:

1. This is an application for a final injunction which is met by what is effectively a cross-application to discharge the interlocutory injunction which has been in force since 2021. The application concerns land adjacent to Redbourn bypass within the Claimant's local authority area. The land in question is bounded to the west by Luton Lane, to the east by a footpath, to the north by a golf club and the bypass runs along the southerly boundary ("the Land").

2. An interlocutory injunction to restrain various possible actions in furtherance of a design unlawfully to develop the Land was granted ex parte by Mr Justice Johnson on 5 March 2021 and has been continued on various occasions since then. The trial of this action was originally listed for a date in October 2023 but, by consent, on 29 September 2023 the Fifth Defendant (to which I shall refer as "the Company") was joined as a Defendant and the trial was adjourned.

3. The Claimant in this matter is the relevant local authority. The First Defendant is the former owner of the Land, was terminally ill at the time when the Claimant sought interlocutory relief and has played no part in relevant events. Prior to trial, the Second Defendant has given an undertaking substantially in the form sought in this trial. The Third Defendant bought the Land from the First Defendant and resold to the Company without a profit. The Third Defendant has taken no part in these proceedings. The Fourth Defendant encompasses unknown newcomers delimited in accordance with the heading to this judgment. The sole director and owner of the Company is Mr Myles Green.

The Evidence

4. For the Claimant, I heard oral evidence from both Ms Victoria Barrett (from whom there were 4 witness statements) and Ms Gillian Donald. Ms Donald is the Planning Team Leader for the Claimant and her witness statement dealt with the planning aspects of the evidence of the Company and of the Company's Notice of Application to discharge the interlocutory injunction. However, as it is not my role either to form an opinion of or to opine on matters of planning judgment, I do not deal with the evidence in detail save to say that I am wholly satisfied that Ms Donald's evidence was truthful. Because she was not involved in the events with which this matter is concerned, her evidence is also of limited assistance.

5. Ms Barrett was at the material times and until her departure from the Claimant's employment in November 2021 a planning enforcement officer for the Claimant. Ms Barrett gave careful and precise evidence in which I am satisfied that she was seeking to assist the court to the best of her ability and, subject to one exception, was at all times giving truthful evidence. The exception arises from her evidence in relation to a planning enforcement matter at Wheelwrights Farm, Ware and another at Glebe Farm, Hartshill of which details of the planning applications are exhibited to her first witness statement. In reliance on those details and enquiries made by Ms Barrett, she asserted in her first witness statement that "both Mr John Mason and Mr James Cash have previously developed land and have brought caravans onto land without planning permission". In a Scott Schedule dated 8 July 2021 apparently requested at one of the return dates on the injunction, the Claimant accepted that neither of those examples was any longer relied upon as these two matters concerned different

individuals also bearing the names James Cash and John Mason. Ms Barrett was visibly shocked when this matter was brought to her attention and I am wholly satisfied that she had no intention to mislead the Court though, given that her evidence on this issue appears in a statement accompanied by a statement of truth, one would have expected the Claimant to have arranged for correcting evidence to be filed. As Ms Barrett was still employed by the Claimant in July 2021, it might have been expected that she would have been involved in the withdrawal of two examples of alleged wrongdoing in other local authority areas by the Second and Third Defendants but both Ms Barrett's total lack of recollection of this matter and the absence of any attempt to correct her evidence by a further witness statement both indicate that this is not the case.

6. For the Company, I heard first oral evidence from Mr Stuart Carruthers, a planning consultant and then from Mrs Taylerson. Mr Carruthers clearly had substantial practical experience of the planning process and the Claimant's attempt in cross-examination to impugn his professional knowledge and experience was of limited assistance, precisely because Mr Carruthers' day to day work is in the field of planning matters and I am satisfied that he is experienced in planning issues.

7. Mr Carruthers explained the different applications which were made and also made reference to a planning permission granted in 1992 in respect of the Land to create a touring caravan park. He referred to his dealings with Mr Taylerson's son in order to determine with the assistance of Mr Taylerson's widow whether the conditions attached to the 1992 permission had been complied with at the time. Ms Barrett gave evidence of a telephone call with Mr Taylerson on 9 March 2021 in which Mr Taylerson told her that he never applied to discharge the conditions on the 1992 planning permission and that it lapsed. Mrs Taylerson had given a statutory declaration in which she had explained that, as the Land was being used for growing Christmas trees, condition 4 of the 1992 consent "should be stayed until the trees were felled, and [we] would submit an application within five years of the work being commenced". The declaration also explained that the accesses to the land had been developed in about 1994 pursuant to the planning consent. However, when Mrs Taylerson gave evidence, in addition to describing Mr Carruthers having access to all her papers and preparing a draft of Mrs Taylerson's evidence for her, albeit one which she thought was slightly muddled, she recalled receiving assistance from a Ms Choudhary who had been representing the Second and Fifth Defendant but who had ceased acting by reason of a conflict of interest. Mrs Taylerson gave evidence that her husband was primarily responsible for the Land but that when it came to plant the trees, Mrs Taylerson did much of the planting but otherwise did not have an active role in relation to the Land albeit that she did discuss it with her husband. With regard to the 1992 consent, Mrs Taylerson's oral evidence was that the planning consent was not proceeded with because the golf course on adjacent land would not permit it. I take that to be a reference to a restrictive covenant for the benefit of the golf course which would not permit the operation of the Land as a touring caravan site. That is all I shall say in relation to the 1992 planning permission as there is clearly an issue of planning judgment on whether or not that permission has been implemented and it is therefore perfectly conceivable that the rights and wrongs of this permission will need to be determined by others. In any event, its relevance to the matters in issue is limited because I am considering the proportionality of injunctive relief to restrain an apprehended breach of planning control and attempts to

prove that a 1992 planning permission has been implemented tend to evidence a willingness to comply with planning controls.

8. At all events, the Claimant's attempt to impugn the Company's reliance on the 1992 consent by reason of what was suggested to be unethical conduct in relation to Mrs Taylerson is not made out. Mr Carruthers very properly ensured that Mrs Taylerson was assisted by her son and Mrs Taylerson was also assisted by Ms Choudhary, a solicitor, albeit one who was not and could not be acting for Mrs Taylerson. Mrs Taylerson attended court with another lady who I understood to be her daughter but who was evidently not aware of the full circumstances in which her mother's statutory declaration had been prepared.

9. I also heard oral evidence from Mr Myles Green, formerly known as Myles Cash and the brother of the Second Defendant. Mr Green is also the sole director and owner of the shares in the Company. In his evidence in chief, Mr Green explained why he and his brother had not been forthcoming in relation to his relationship to the land. He described a feud with another traveller family and a shooting approximately 7-8 years ago in which he was wounded with a bullet passing through his ribs ricocheting off his rear rib and lodging near his spine, leading to a delicate but successful operation at the John Radcliffe Hospital in Oxford. He described his subsequent life on the run living for an extended period in Holland immediately after the shooting (during which time he spoke to a female detective from the UK who was trying, so far unsuccessfully, to get to the bottom of the shooting) and then USA and Canada to avoid risk to life. He clearly also spends time in the UK but stays at different locations, moving on whenever he feels necessary.

10. Mr Green's evidence was that, when the interlocutory injunction was obtained in relation to this land in March 2021, questions were asked and gossip spread within the traveller community as to who owned the land leading to the identification of Mr Green as the owner and, indirectly to Mr Green's former identity being exposed as Myles Cash, the brother of James Cash (the second defendant).

11. The Claimant contests Mr Green's evidence and submits that the balance of the evidence is that Mr Green lives in the Redbourne area; that he posts on Facebook in the name of Myles Cash and that therefore there is no real threat to Mr Green because a person who truly fears for their safety and had tried for eight years to conceal their identity would not behave in this manner and would not take the risk of posting in their own name. As regards the posts on Facebook, the Claimant relies on the fact that, at the time that the Council obtained an injunction, Mr Green posted on the Facebook page in the name of Myles Cash to protest regarding the injunction and engaged in posts concerning the planning details of the Land and the 1992 planning permission. Also, the Claimant relies on the fact that the material about the alleged threat to life which Mr Green faces was not set out in his witness statement.

12. The starting point in assessing Mr Green's evidence is the first half of hour of the evidence in which he described graphically both the shooting itself and the effect on his life since that moment when he had been obliged to go into hiding. In my judgment Mr Green appeared extremely nervous at the outset of his evidence and traumatised merely by recounting the events – he sobbed and his body language was one of fear. I paused the evidence to seek the views of counsel on whether to continue to hear Mr Green's evidence in private to avert any risks arising from the

giving of evidence. As a result, the balance of Mr Green's evidence was heard in private. Both the demeanour of Mr Green and his body language together with the vivid picture which he painted all point to the truth of his statements. Such truth receives from support from his evidence which I accept that the police advised the tenants of a property he owned (83 Walsingham Close, Hatfield) to leave the property because of police concerns that they could be mistaken for Mr Green and become the victims of violence.

13. As regards the veracity of Mr Green's fears and the fact that he should have included his explanations in his witness statement, Ms Barrett's fourth witness statement summarises the factors which are alleged to support the grant of the injunction but does not rely on what is now submitted by the Claimant to be the lack of transparency of both the Second Defendant and Mr Green about their intentions and their relationship as brothers. It seems to me that the alleged lack of transparency has assumed a higher profile in the oral evidence than might have been anticipated and that Mr Green cannot be criticised for not including the evidently upsetting details in a witness statement.

14. As regards social media, the post that which is in the name of Myles Cash: "I can confirm that we will be protesting out side local area including Hitchen, St Albans, Redbourn and Hatfield. Every one will be welcome both travellers and none travellers." Mr Green explained in evidence that this was his post but that, whilst he was advocating protests, he was not intending to attend them and that a social media post does not give your whereabouts. He explained that he was annoyed about the injunction which seemed in his opinion to be based on the fact that no traveller owning land could be trusted to abide by the law. He said that the perspective of discrimination against travellers, against which he was proposing to protest, was something which resonated with non-traveller members of the community. Whilst I accept that such posts are to a degree inconsistent with the fear which Mr Green has described, in my judgment this does not mean that there is no current threat to Mr Green. He described posting in his current name too but that, in relation to the Land, his cover had been blown by the injunction itself and the gossip which followed.

15. It follows that I reject the Claimant's submission that I should find that Mr Green's use of the name Myles Green rather than his birth name of Myles Cash was an attempt to conceal from the Claimant his involvement in the Cholesbury Lane site, to which I will return, and/or to conceal his link with his brother, the Second Defendant. I am satisfied that Mr Green was the victim of a shooting, that he changed his name 7-8 years ago in an effort to protect himself, that the police have not been able to apprehend the perpetrators and that Mr Green is therefore at risk of further violence. Whilst I readily acknowledge that a combination of the recurrence of identical names taken together with Mr Green's change of name complicated matters for Ms Barrett in her investigations of the Land, a threat to life is a reasonable reason for seeking to remain incognito. It follows that I accept the essence of Mr Green's explanation as to why he changed his name and the threat under which he lives which also tends to support a desire not to be identified with his brother, the Second Defendant.

16. Significant weight was placed by the Claimant on Cholesbury Lane in Buckinghamshire where it is common ground that the land was owned by the Second Defendant and was developed by the Second Defendant, his brother Martin Cash and one Myles Cash. In that case, a stop notice was breached and the Claimant relies on

this breach in relation to the Cholesbury Lane site in support of its fear as to the Land. In so far as that matter sheds light on the possible conduct of the Second Defendant in relation to the Land, given in particular that the Second Defendant has evidently been assisting the Company in relation to the Land, I was told that the Second Defendant has provided an undertaking in the terms of the injunction requested. However, the remaining issue is whether the Myles Cash involved in Cholesbury Lane is the same person as Myles Green. I bear in mind on this point the unchallenged evidence of Mr Green that a tradition in the traveller community is the naming of children after their grandparents so that the first son is named after the father's father and the second son is named after the mother's father. Where the parents have both siblings and male offspring, this is inevitably likely to lead to cousins bearing identical names.

17. Mr Green's evidence was that he has two cousins called Myles Cash, both of whom are currently in the United States. The first is a boxer but Mr Green told the court that he also has another cousin who is also called Myles Cash. Mr Green said in evidence that he attended the planning enquiry in Buckinghamshire because he understood that the Council had mistaken the Myles Cash involved in that site to be Mr Green himself or at least that he feared that this would be the case, it seems due to the involvement of his brother in Cholesbury Lane. He then said that Martin Cash gave evidence at the enquiry that the Myles Cash in question was not his brother but a cousin which was accepted. The Inspector's Appeal Decision is dated 7 February 2023 and refers to "Evidence from the appellants … was given on affirmation." Ms Bolton draws attention to the fact that no dispute over identity is noted whereas, she submits, it would have been if there had been a disputed identity and also to the fact that the appellants' case was that they were homeless which would be an odd submission if the Myles Cash in question were in the United States. Whilst it is right that no dispute over identity is noted, this does not stand in the way of Mr Green attending to deal with any possible dispute over identity. Ms Bolton points out that a witness would have had to provide a witness statement four weeks ahead but Mr Green was not seeking to give evidence as to the facts but to verify that he was not the relevant Myles Cash for Cholesbury Lane if that were an issue.

18. Ms Barrett's second witness statement dated 11 March 2021, at paragraphs 20-23, addresses Cholesbury Lane and it does so by seeking to establish that the land in issue in that case belongs to the Second Defendant but without addressing whether the Myles Cash in that case is in fact Mr Myles Green. In cross examination Ms Barrett said that she had spoken to the councils involved in the other matters alleged to involve James Cash, John Mason and Myles Cash, including Buckinghamshire Council, and sought to verify via physical descriptions and dates of birth the relevant parties and that she was confident that James Cash and Myles Cash/Green were both involved in Cholesbury Lane. One problem is that James Cash is the brother of Myles Cash, now Myles Green, as Ms Barrett suspected and as Mr Green accepts but that does not establish that Myles Cash/Green was involved in Cholesbury Lane. However the main problem is that two out of three of Ms Barrett's examples have proved to be incorrect, a fact of which Ms Barrett was unaware until giving oral evidence. A Scott Schedule from the Claimant which lists "Maintained Allegations" and "Relinquished Allegations" maintains certain allegations but without referring to paragraphs 20-23 of Ms Barrett's second witness statement which dealt with Cholesbury Lane. In contrast, specific allegations against the Second and Third

Defendants as being the same persons in two other matters in Ware, Herts and Hartsill are no longer maintained.

19. Unfortunately the absence of any further witness statement correcting the evidence with regard to two allegations and maintaining (if she wanted to do so) her evidence in relation to Cholesbury Lane means that Ms Barrett has had no opportunity to reconsider her evidence in relation to the third example of prior unlawful conduct and her written evidence is focused on Mr Green's links to the Second Defendant which are admitted. The disarray on the Claimant's side on this issue was compounded when, at the beginning of Ms Donald's evidence, she retracted paragraphs 9-14 of her witness statement which were evidently written without knowledge of the "Relinquished allegations" in the Claimant's July 2021 Scott Schedule. Somewhat reluctantly, as I am conscious that councils do not have unlimited funds to deal with matters like the present and can only go so far, I find that the allegation that Mr Green was involved in Cholesbury Lane not to have been proved on the balance of probabilities. If a witness has a method for verifying certain matters which is applied to three cases and evidence in relation to two of those three cases is subsequently not relied on, that casts doubt on the method and requires at the very least the opportunity for a review by the witness of the evidence in relation to the third case which would have been provided by a witness statement correcting her earlier evidence. In fact Ms Barrett's evidence was to the effect that she last worked on the case in June-July 2021 and had had no input since then.

20. In so finding, I am conscious that Ms Barrett is a diligent and careful investigator, if anything difficult to convince that a fact has been established. We see this from her evidence in relation to the ownership of the Land, lack of clarity in relation to which was still relied on in her 29 June 2021 fourth witness statement despite the fact that, at the latest on 5 May 2021, David Richards of Carr Richards Solicitors had set out a full account of how the Company became the owner of the Land. When presented in cross-examination with the correspondence from Carr Richards, Ms Barrett's reply was to assert that another solicitor had been struck off for fraud and insisted that she remained suspicious about the movement of the Land and the current ownership of the Land. Whatever the position of the other solicitor as asserted by Ms Barrett, that does not explain why she was not able to accept a clear letter from Mr Richards. Even when shown during her evidence the forms TR1 relating to the transfers of the two relevant parcels comprising the Land to the Company, her view was that the entire matter remains "shady" and something that she could not get to the bottom of. Ms Barrett refused to accept that the Second Defendant's assertion that the Land had been transferred to the Company was not dishonest. Ms Barrett cited the fact that John Mason is registered at James Cash' address in Hemel Hempstead and that James Cash, until sale, had a charge over 83 Walsingham Close owned by Mr Green. However, neither of those matters sheds any light on the ownership of the Land and so cannot assist Ms Barrett's conviction as to ownership one way or the other. I find this evidence of Ms Barrett troubling as a failure to accept clear evidence from a solicitor and/or the TR1 forms from the Land Registry tends to cast doubt on Ms Barrett's other judgments including that in relation to the Cholesbury Lane site.

21. When pressed in cross examination on why, if a major issue in her mind was uncertainty as to the ownership of the Land, Ms Barrett had not used a Section 330 Town and Country Planning Act 1990 Act ("TCPA 1990") Notice requiring

information as to interests in the Land, her response was that it takes three weeks to turn around and would not have been relevant for the interlocutory injunction. Whilst that may well be true of the interlocutory stage, it does not deal with why no such notice has been served between summer 2021 and trial.

The Issues for Determination

22. I understand the parties to have agreed that the following issues arise:

i) The statutory test for a section 187B application and its purpose;

ii) How is the Court's discretion to be exercised when considering an injunction pursuant to section 187B;

iii) Who assesses whether there is a breach or apprehended breach of planning control? A matter of planning judgment?

iv) The approach to the enforcement toolkit;

v) Any difference rising in the courts approach to interim and final injunctions under section 187B and the approach to be taken when considering the common law and any statutory tests for a final injunction, where the injunction sought relies primarily on anticipatory breaches of planning law;

vi) how to assess harm to the Green Belt;

vii) the relevant application of the principles and guidance set out in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47

23. Section 187B provides as follows:

> "*Injunctions restraining breaches of planning control*.
>
> (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
>
> (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.
>
> (3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.
>
> (4) In this section 'the court' means the High Court or the county court."

The Approach to s. 187B

24. For the purposes of Issues (i) and (ii), I turn to the approach to be taken by a Judge considering whether to grant an injunction which is considered in the judgment of Lord Bingham in *South Buckinghamshire District Council v Porter* [2003] 2 AC 558 where, at [20], he cites with approval the judgment of Simon Brown LJ in the Court of Appeal:

> "38. … It seems to me perfectly clear that the judge on a section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the available availability of suitable alternative sites. … The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gypsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.
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> 39. Relevant too will be the local authorities decision under section 187B(1) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations …

> 40. Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgement in the case.
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> 41. … the courts discretion is absolute and injunctive relief is unlikely unless properly thought to be 'commensurate' - in today's language proportionate. … Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought - here the safeguarding of the environment - but also that it does not impose an excessive burden on the individual whose private interests - here the gypsy's private life and home the retention of his ethnic identity - are at stake."

25. Lord Bingham continued:

> "28. The court's power to grant an injunction under section 187B is a discretionary power. The permissive "may" in subsection (2) applies not only to the terms of any injunction the court may grant but also to the decision whether it should grant any injunction. It is indeed inherent in the concept of an injunction in English law that it is a remedy that the court may but need not grant, depending on its judgment of all the circumstances. Underpinning the court's jurisdiction to grant an injunction is section 37(1) of the Supreme Court Act 1981 , conferring power to do so "in all cases in which it appears to the court to be just and convenient to do so". Thus the court is not obliged to grant an injunction because a local authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction and so makes application to the court. No assistance is gained from *R v Wicks [1998] AC 92* , relied on by the local authorities, where it was held to be too late to challenge an enforcement notice in criminal proceedings, a situation quite unlike the present.
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> 29. The court's discretion to grant or withhold relief is not however unfettered (and by quoting the word "absolute" from the 1991 Circular in paragraph 41 of his judgment Simon Brown LJ cannot have intended to suggest that it was). The discretion of the court under section 187B , like every other judicial discretion, must be exercised judicially. That means, in this context, that the power must be exercised with due regard to the purpose for which the power was conferred: to restrain actual and threatened breaches of planning control. The power

exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. Since the facts of different cases are infinitely various, no single test can be prescribed to distinguish cases in which the court's discretion should be exercised in favour of granting an injunction from those in which it should not. Where it appears that a breach or apprehended breach will continue or occur unless and until effectively restrained by the law and that nothing short of an injunction will provide effective restraint (*City of London Corpn v Bovis Construction Ltd [1992] 3 All ER 697* , 714), that will point strongly towards the grant of an injunction. So will a history of unsuccessful enforcement and persistent non-compliance, as will evidence that the defendant has played the system by wilfully exploiting every opportunity for prevarication and delay, although section 187B(1) makes plain that a local planning authority, in applying for an injunction, need not have exercised nor propose to exercise any of its other enforcement powers under Part VII of the Act. In cases such as these the task of the court may be relatively straightforward. But in all cases the court must decide whether in all the circumstances it is just to grant the relief sought against the particular defendant.

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

> particular facts, and the court must always, of course, act on evidence."

The extent to which the Court considers planning issues

26. It also follows in my judgment from the above that any assessment of the harm to the Green Belt is for the Claimant, thus answering Issue (vi). However, in relation to Issue (iii), although the Claimant also must assess whether there is a breach or apprehended breach of planning control, Simon Brown LJ clearly contemplated by his reference to the "degree and flagrancy of the postulated breach" that the Court must carry out its own assessment of the strength of the case advanced by the Claimant. To do so would be to accept that any future unauthorised development of the Land which lies in the Green Belt would be a serious breach of planning control and that the Claimant is in principle entitled to have recourse to s. 187B to protect the public interest in the retention of the Green Belt. But the likelihood of such apprehended breach occurring due to the actions of the Company must be a matter which the Court is both entitled to assess and to take into account. Put another way, the Court must be able to assess the quality of the evidence on which a council has relied in invoking s. 187B as an integral part of applying the proportionality test: see Simon Brown LJ's reference in paragraph 39 of the quotation to "… the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations …". Quite apart from anything else, a Court would not be able to assess the necessity of an injunction unless it can assess the evidence going to the likelihood or not that an apprehended planning breach will occur.

Final injunctions which anticipate breaches of planning law

27. In relation to Issue (v) as regards the correct approach to injunctions sought before the relevant conduct has occurred, both parties cited the judgment of Mr Justice Marcus Smith in *Vastint Leeds BV v Persons unknown* [2018] EWHC 2456 (Ch), [2019] 4 WLR 2. Paragraphs 26-31 of the *Vastint* judgment focus on anticipatory aspect of the relief and it is sufficient to quote the summary at paragraph 31:

> "From this, I derive the following propositions:
>
> (1) A distinction is drawn between final *mandatory* and final *prohibitory* quia timet injunctions. Because the former oblige the defendant to do something, whilst the latter merely oblige the defendant not to interfere with the claimant's rights, it is harder to persuade a court to grant a mandatory than a prohibitory injunction. That said, the approach to the granting of a quia timet injunction, whether mandatory or prohibitory, is essentially the same.
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> (2) Quia timet injunctions are granted where the breach of a claimant's rights is threatened, but where (for some reason) the claimant's cause of action is not complete. This may be for a number of reasons. The threatened wrong may, as here, be entirely anticipatory. On the other hand, as in *Hooper v Rogers* , the cause of action may be substantially complete.

In *Hooper v Rogers* , an act constituting nuisance or an unlawful interference with the claimant's land had been committed, but damage not yet sustained by the claimant but was only in prospect for the future.

(3) When considering whether to grant a quia timet injunction, the court follows a two-stage test: (a) First, is there a strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant's rights? (b) Secondly, if the defendant did an act in contravention of the claimant's rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of *actual* infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?

(4) There will be multiple factors relevant to an assessment of each of these two stages, and there is some overlap between what is material to each. Beginning with the first stage—the strong possibility that there will be an infringement of the claimant's rights—and without seeking to be comprehensive, the following factors are relevant: (a) If the anticipated infringement of the claimant's rights is entirely anticipatory—as here—it will be relevant to ask what other steps the claimant might take to ensure that the infringement does not occur. Here, for example, Vastint has taken considerable steps to prevent trespass; and yet, still, the threat exists. (b) The attitude of the defendant or anticipated defendant in the case of an anticipated infringement is significant. As *Spry, Equitable Remedies* , 9th ed (2013) notes at p 393: “One of the most important indications of the defendant's intentions is ordinarily found in his own statements and actions”. (c) Of course, where acts that may lead to an infringement have *already* been committed, it may be that the defendant's intentions are less significant than the natural and probable consequences of his or her act. (d) The time-frame between the application for relief and the threatened infringement may be relevant. The courts often use the language of imminence, meaning that the remedy sought must not be premature. (*Hooper v Rogers [1975] Ch 43*, 50)

(5) Turning to the second stage, it is necessary to ask the counterfactual question: assuming no quia timet injunction, but an infringement of the claimant's rights, how effective will a more-or-less immediate interim injunction plus damages in due course be as a remedy for that infringement? Essentially, the question is how easily the harm of the infringement can be undone by an ex post rather than an ex ante intervention, but the following other factors are material: (a) The gravity of the anticipated harm. It seems to me that if some of the consequences of an infringement are potentially very serious

> and incapable of ex post remedy, albeit only one of many types of harm capable of occurring, the seriousness of these irremediable harms is a factor that must be borne in mind. (b) The distinction between mandatory and prohibitory injunctions."

28. The Claimant expressed certain reservations with regard to the direct applicability of this decision on the grounds that the cause of action (breach and apprehended breach of planning control) is complete in this case in contrast to the position in *Vastint* because here the local planning authority has considered it necessary or expedient for an apprehended breach of planning control to be restrained by injunction so that I am not concerned with whether the authority considers it necessary or expedient to seek relief for an apprehended breach of planning control. That does contrast with the position in *Vastint* where a trespass was merely threatened so that the cause of action was not complete. But the apprehended breach of which complaint is made in this case is unauthorised development of the Land which has not yet occurred which seems to me to make Marcus Smith J's approach in *Vastint* squarely in point. I am guided by *Vastint* on the appropriate relief where an event has not yet occurred so that the likelihood of its occurrence must necessarily be assessed. However the Claimant also argued a different ground of distinction, namely that *Vastint* was concerned with a private law cause of action whereas this case is concerned with a public law cause of action. I agree that the Claimant is acting in the public interest to prevent an apprehended breach of Green Belt which there is a strong public interest in preserving and that when it comes to the question of irreparable harm the starting point is that there is a strong case that irreparable harm is made out. But that does not detract from the necessity of assessing whether an injunction is proportionate on the facts of this case.

29. The Claimant also relied on the judgment of Mead J in *Koninklijke Philips v Guangdong Oppo Mobile* [2022] EWHC 1703 (Pat) where the Court cited from the judgment of Marcus Smith J in *Vastint* and in which the Court was considering a possible application in China for an anti-suit injunction which was thought to be terminal for the English proceedings if it occurred. Mead J stressed at [19]-[20] the multifactorial nature of the test so that it is not sufficient to assess the likelihood of the defendant doing the relevant act albeit that the likelihood that the relevant act will be done is a very significant factor and "perhaps the most significant one in many cases".

30. It is against that background that I should apply this approach to the facts.

(1) Strong probability of a breach of right relied on unless the Company is restrained

31. It is important at the outset to make clear that the breach apprehended by the Council in this case is not unauthorised encampment by travellers but unauthorised development by the Company. It is also common ground between the parties that, currently, the land is covered by the tree stumps of the cut trees so that it would not in any event be feasible to bring caravans onto the land without some prior works occurring.

32. I also remind myself that the injunction is sought against the Company and persons unknown which would include Mr Green himself. Given that the allegation is unauthorised development, it seems improbable that this would occur otherwise than at the instance of a current or future owner or someone with at least an interest in the Land as incurring costs to improve land would tend to require some expectation of a return on the monies invested.

33. The Claimant put the case against Persons Unknown on the basis that the land could be transferred to another natural or legal person who would not be bound by any injunction.

34. The fact that an undertaking satisfactory to the Claimant has been given by the Second Defendant is significant where there is evidence which goes to the actions of the Second Defendant but not to the actions of Mr Green. I have in mind that the Company acted mainly through instructions given by Mr Green to the Second Defendant on the basis that Mr Green moves around for his own safety but that does not mean that I can attribute all actions of the Second Defendant to Mr Green or the Company.

35. My starting point is that the Claimant in March 2021 apprehended a breach of planning control which itself is a factor in favour of relief as the task of considering whether there is or is not an apprehended breach of planning has been allocated to planning authorities. Also, in accordance with the express words of the statute, there is no prior requirement to exercise other powers under the same part of the 1990 Act. I also accept that the Land is part of the Green Belt and that, as such, if there were a breach of planning control, this would be serious and that factor has substantial weight in a case such as this.

36. The Claimant relies on the Company's clearance of what appears from photographs to be the vast majority of the trees on the Land, leaving a line of trees down the boundaries with the golf club and the bypass respectively. A Forestry Commission licence was produced to the Court and clearly limits the removal of trees to "30% of the original canopy cover per operation". Against that, it was not disputed that the pines had been planted too close together to permit them to grow to maturity as opposed to being cut as Christmas trees after a relatively short time in accordance with the restrictive covenant imposed by the golf club at the time of sale. Accordingly it might be said and Mr Green did say that there were good reasons to cut down the trees. The Second Defendant did not give evidence, no doubt as the settlement in which the Second Defendant gave an undertaking to the Council did not provide for him to provide oral evidence at the trial. His witness statement puts forward various reasons for the removal of the trees including that they were susceptible to wind damage, that the conveyance required the land above a sewage pipe crossing the land to be free of trees and that he had cleared no more than 500 trees and less than 30% of the land. That last assertion does not appear consistent with the photographic evidence which appears to show that most of the trees have been removed. However I need to take into account the fact that, though notified, the Forestry Commission has not taken action against the Company and indeed Mr Green gave evidence that he had seen a letter from the Forestry Commission stating that they intended to take no further action in respect of any breach of the licence. That fact tends to support the Mr Green's reliance on the poor quality of the trees on the Land prior to the felling carried out by the Second Defendant. That fact does not expunge

what appears on the evidence before me to be a breach of the felling licence. The Claimant asks me to rely on that breach as indicative of behaviour by the Company and Mr Green which is unconstrained by rules and regulations even though the Claimant also accepts that breach of the felling licence is not itself a breach of planning regulations. The Claimant submits that, if the felling were intended to implement the 1992 planning permission and that permission had lapsed through non-discharge of the relevant conditions, then the felling itself would itself constitute breach of planning. Though Mr Green clearly does intend to rely on the 1992 planning permission to the extent that he can, his reasoning in clearing trees from the land was that the trees were overgrown and the land was more useable in that state. He accepted that he asked the Second Defendant, who is in business as a tree surgeon, to remove as many of the overgrown trees as he could and accepted in cross examination that "maybe too many trees were cut down".

37. The Claimant's submission as to why the trees were felled was linked to its submission about the purpose of the Company owning the land at all. The Claimant could see no purpose at all in owning the land if it were not for unauthorised development and Mr Green was cross-examined to this effect. His answer was that the golf club had put forward its land some years ago for inclusion in the Local Plan as land for development as housing. Had that development occurred reasoned Mr Green, the Land may have had prospects of being taken for development at the same time. Mr Green also gave evidence that the Land would be a good place to graze horses if it were a field. He explained that he had employed Mr Carruthers to investigate the 1992 planning permission as well as a highway specialist to look at the entrances and whether the change of entrances to the Land by Mr Taylerson had implemented the 1992 planning permission. But, on the question of why Mr Green was prepared to purchase and own the Land, the overall thrust of Mr Green's evidence was that he was speculating on possible future changes in the planning status of the Land and, in the meantime, aiming perhaps to make some money renting it out as grazing land. In my judgment, whilst it does appear to be correct that the clearance of the trees exceeded that which was permitted in the licence, the trees in fact cleared had little obvious merit and, in the light of other evidence, does not ground a submission that Mr Green, unless restrained, is likely to ignore all planning restrictions on the land and engage in unauthorised development. I accept Mr Green's explanation for his purchase of the land as being reasonable and one which rebuts the suggestion that the only purpose is unauthorised development. Also, whilst one possible scenario in which clearing the trees could be of use would be if it were established that the conditions on the 1992 planning permission had been implemented, Mr Green's clear evidence was that he was using professional advisers to seek to establish that that was the case and was not intending to implement the 1992 permission without first of all establishing that he was lawfully entitled to rely on it.

38. Much reliance was also placed by the Claimant on the erection of a fence by the Second Defendant on the Company's behalf (and at Mr Green's request). Mr Green accepted that he gave instructions for the fence to be erected. There was evidence that fence posts of 1.9m high were erected and a close boarded fence put in place whereas the maximum height of a fence immediately adjacent to the highway without specific planning permission is 1m. However the Company relied on the fact that the Claimant's officers (including Ms Barrett) were present when the fence was being

erected and passed no comment on the legality of the fence. Ms Barrett accepted that nothing was said on site about the illegality of the fence. Mr Green's evidence was that he was unaware that erecting the fence was a breach of planning, that he understood a short time after the fence was erected from Emrys Williams of Thompson & Williams that the Claimant considered it to be unlawful and he immediately gave instructions for it to be removed. Ms Barrett accepted that nothing was said by the Claimant's employees who observed the erection of the fence to the effect that the fence breached planning; that Ms Barrett contacted Mr Emrys Williams to make that point; that it was removed and that no formal objection was ever taken to the fence, no doubt because it had already been removed. In those circumstances, it is problematic for the Claimant to rely on this breach as it is equally consistent with Mr Green not knowing of the relevant height limit for fences next to the highway but then swiftly removing the fence so as to comply with planning rules.

39. The Claimant also relies on the misleading statements of the Second Defendant as established by the evidence of Mr Green. The Second Defendant claimed that he was clearing the Land for a proposed use as a Christmas tree farm whereas Mr Green's evidence was that this was never envisaged. The Claimant also relied on the Second Defendant attempting to conceal his involvement with the Land as a mere contractor whereas in fact Mr Green's evidence was that the Second Defendant had effectively been managing the Land. The problem with this evidence is that it goes to the Second Defendant and not to Mr Green whose evidence on these issues appears in my judgment to have been frank. It does seem that the Second Defendant had been attempting to conceal his links with Mr Green and the Company but then that is not an unreasonable course where he knew that his brother's life was apparently at risk.

40. The Claimant submits that the breach of planning control by the fence plus the clearing of the trees and the Second Defendant's misleading statements are sufficient for the Claimant to have apprehended a breach of planning control when it applied for the injunction in 2021. The Claimant also relies on the evasive statements of the Second Defendant but while they may well ground an injunction against the Second Defendant had an undertaking not been provided, it is more difficult to attribute that evasiveness to the Company and Mr Green, in particular where the threat of violence to Mr Green provides an alternative explanation for evasiveness over the Second Defendant's links with the Company and Mr Green.

41. I was urged to consider the determination to develop the site as a caravan site by members of the gypsy and traveller community without first confirming whether there was any lawful right to do so and asserting that there was an implemented planning permission. On the evidence, it appears that the Second Defendant did make such an assertion but the balance of the evidence in respect of Mr Green does not go that far. On the contrary, Mr Green engaged Mr Carruthers to seek to establish by lawful means that the 1992 planning permission has been implemented so that the part of the submission which refers to acts being done without first confirming that there was a lawful right to do so does not in my judgment apply to Mr Green.

42. I note the reference in the Claimant's submissions to Mr Green being a member of the gypsy and traveller community and that there have been cases elsewhere, as Mr Carruthers accepted, where gypsies/travellers, as a prelude to unlawful development, cleared the land and installed a high fence. To make such a submission is problematic as it is akin to arguing that a person will act unlawfully because he/she belongs to a

particular racial group which only has to be stated to be rejected. It seems to me that there is no substitute for analysing the facts of each individual case.

43. A troubling aspect of this case is the apparent inactivity of the Claimant since July 2021 as I have to consider the issue of proportionality as of today, not as of a date in 2021. Ms Barrett left the Claimant's employment in November 2021 but no attempt at contacting Mr Green has apparently been made in order to ascertain his intentions for the land since Ms Barrett left.

44. A major factor relied on was alleged doubt as to the ownership of the land (despite the Carr Richards Solicitors' letter of 5 May 2021) but no attempt was made to allay that doubt for example by the use of other planning powers of the Claimant such as section 330 of the TCPA 1990. This raises Issue (iv), albeit as regards not only enforcement powers, but relevant powers more generally. It was submitted that use of the s. 330 power would allow a 21 day period for response which was not quick enough to be useful in 2021 and that, once an injunction is obtained, it is not the practice of councils to use this power. Whilst there is no obligation to use this or any other power, such powers are conferred for a reason and a council which has carried out no investigations to bring matters up to date from the interlocutory stage and to seek to focus down the grounds on which a breach of planning control is apprehended to those current at the time of applying for a final injunction will inevitably find it more challenging to submit that a final injunction is proportionate. That is not to impose an obligation of result on councils. Had the Claimant made served a s. 330 request and not had a response and had it renewed efforts in summer 2023 to ascertain the intentions of Mr Green/the Company and not been able to elicit any response via for example Mr Carruthers, this would be likely to be significant factors in favour of relief. On the other hand, Mr Green being asked for the first time in cross-examination about his intentions and purpose in buying the land seems to me too late.

45. I also take account of the procedural way in which the Company has been joined. The Company took the initiative in October 2023 to apply to be joined as a party and provided copies exhibited to Mr Green's witness statement of the relevant Land Registry forms evidencing the transfers of land comprising the Land. In my judgment, taking the initiative to be joined is not the action of someone intent on riding roughshod over planning laws but rather a person intent on their land not being subject to an injunction to prevent otherwise lawful activity. I reject the submission that because the injunction is designed only to ensure reasonable compliance with the law, this is in some way a ground for not discharging the injunction. The law is that the Claimant is only entitled to an injunction if it can satisfy the legal test for its grant, not that the Defendant must establish the ways in which an injunction is causing him harm or inconvenience. In any event, the machines which grind stumps are themselves heavy machinery prima facie falling within the terms of the injunction (not bring onto the Land "any plant or machinery used or capable of being used for the removal of trees") and the evidence is to the effect that this site is covered in tree stumps at close intervals which would need removing if the land were to be put to any use, subject of course to any applicable planning considerations.

46. I am also troubled by the open offer put forward in an email of 11 September 2023 by the Second Defendant's solicitor in the form of draft terms of a consent order as follows:

> "1. Mr Byggs Ltd the entity vested with the Legal and Beneficial interest to give an undertaking to Court that there will not carry out any further works without planning permission apart from the permitted as of the use of the land.
>
> 2. The Injunction against all parties to be discharged without any cost liabilities apart from 5th paragraphs of this email.
>
> 3. All cut wood, burnt logs, broken branches, machinery, equipment and rubbish to be allowed to remove from the site; and site to be secured to avoid further trespass, vandalism, arson and criminal damage to the land and property onsite.
>
> 4. Claimant to agree to discuss a provision of pre-planning application conditions or if any to grant an alternative to the existing planning and to agree and document options such as residential houses, flats or any such other to be discussed prior to the signing of the consent order.
>
> 5. Claimant's costs to be agreed reasonably amongst parties; if not the costs to be assessed through court as per the CPR Rules."

47. In my judgment, this was a genuine attempt to resolve the dispute prior to the hearing then listed for 3 October 2023. In response by a letter of 15 September 2023, the Claimant's solicitors offered the Second Defendant a final consent order in the terms of the injunction sought which would avoid the Second Defendant needing to attend court. As we know, the Second Defendant appears to have later accepted some variant of that offer. However there was no response from the Claimant's solicitors in respect of the offer by the Company. Whilst the Claimant's solicitors may well need to have queried the authority of the Second Defendant's solicitors to make such an offer on behalf of the Company and no doubt other aspects of the offer, the failure to respond to the Company's offer is also troubling. It was clear at that stage that Brilliance Solicitors for the Second Defendant were in contact with the Company and that therefore there was a real opportunity for the Claimant to engage with the Company even had there been no opportunity up to that date.

48. That failure is not corrected by an offer by the Claimant's solicitors dated 19 December Ms Davies of Portcullis Property lawyers which the Claimant's submissions identify as the Company's solicitors. The offer was to accept a formal undertaking in the terms of the injunction. Mr Green's attitude towards that offer was that, by then, he had incurred the costs of instructing separate lawyers on behalf of the Company and wanted to discharge the injunction as it was not justified so the offer was rejected.

49. Drawing the strands together, I reject the submission that nothing short of an effective injunction will prevent a breach of planning rules in this case. I take account of the entirety of the above discussion but in particular there is an absence of evidence that other measures have failed in that the Claimant did not need to take enforcement measures for the fence as it was voluntarily removed. Lord Bingham's judgment in *South Buckinghamshire* suggests that a history of unsuccessful enforcement and

persistent non-compliance would be relevant factors. The principal difficulty however is that the evidence establishes conduct by the Company and Mr Green which is consistent with their seeking to comply with planning rules. The absence of attempts by the Claimant to elicit the up to date position are a handicap for the Claimant which has come to trial ignorant of the attitude of the Company and Mr Green as is the failure to respond to an offer from the Company. In a quia timet context which I believe this is, I agree with Marcus Smith J in *Vastint* at [31(4)] that the attitude of a defendant in a case of anticipated infringement is significant. And while I fully accept that the Claimant has exercised its planning judgment in making the application under s. 187B, following the approach of Lord Justice Simon Brown LJ in the Court of Appeal in *South Buckinghamshire* at [39], the weight of this decision is limited in this case because of the passage of time and the absence of any recent attempt to engage with the Company or Mr Green to elicit up to date information in what has always been a borderline case.

(2) Gravity of resulting harm

50. On this issue, I accept the Claimant's submission that substantial weight must be placed on the preservation of Green Belt. I also accept that once the harm of unlawful development is done, it is difficult to undo and that damages do not undo such harm. On this aspect, the role of the Claimant as the guardian of the public interest in preserving the Green Belt is very important as it acts solely in the public interest and it is no doubt difficult for the Claimant to perceive the risks to all land within its remit in time to prevent such irreparable damage. To that extent I would accept the Claimant's submission that *Vastint*, concerned as it is with an application for relief by a private landowner, raises distinct considerations on the issue of gravity of infringement to a case such as the present. I also accept the Claimant's submission founded on the judgment of Meade J in *Koninklijke Philips NV v Guandong Oppo Mobile Telecommunications Corp Ltd* [2022] EWHC 1703 (Pat) at [20] that the harm to the Claimant if the Defendant acted as apprehended is a significant consideration. Had I found an injunction to be otherwise proportionate, I would have found that this aspect of the matter is established to the requisite level to grant an injunction.

Relief and Disposal

51. It follows from the above that I reject the application for a final injunction against the Company. In doing so, I am not simply accepting the word of Mr Green that he will not undertake unlawful development but I am weighing up the entirety of the evidence and in particular whether Mr Green's statement is credible when taken against that background. In the event, I find that it is credible.

52. I turn to consider relief as against other parties. No relief is sought against the First Defendant or his personal representatives (the First Defendant is deceased) as he was only joined at a time when it was not certain so far as the Claimant was concerned that he had no longer any interest in the land due to time lapse at the Land Registry between transfer and registration of the transfer. It follows that the claim against the First Defendant must be dismissed.

53. I must also consider the position as against the Third Defendant who has not appeared or filed any acknowledgement of service. He briefly owned the land and the Second Defendant's witness statement records him as asking the Second Defendant to

undertake work on the trees. However I have no evidence as to the attitude of the Third Defendant. There is no doubt from his residential address being that of the Second Defendant that he is close to the Second Defendant and possibly also to the Company as I was told that he made no profit when he transferred land to the Company so that it is possible (it was not explored in the evidence) that he might have some residual interest in the Land. Even though the example of Mr Mason breaching planning control in another local authority area is no longer relied on, it does appear to me from the absence of any communication from the Third Defendant despite multiple attempts by the Council in 2021 that the Third Defendant is consciously lying low which does create a real risk that he may be prepared to breach planning rules if the opportunity presented itself. I am satisfied that there is a strong probability that, unless restrained, the Third Defendant would act in breach of planning control. As I am also satisfied as to the gravity of the resulting harm, I grant final injunctive relief against the Third Defendant.

54. As regards persons unknown, it is submitted by the Claimant that relief is necessary because the Company may transfer the land at any moment without the knowledge of the Claimant. Reliance is placed on the fact that the Land was placed in an auction by the Company in 2021 but Mr Green's evidence was that it was also withdrawn from the auction. It is relevant in this regard that I have already rejected the application against the Company and that the Second Defendant has provided an undertaking. Those facts are not however determinative as an unknown third party may present a greater risk. I stress here that the relevant alleged risk is not unauthorised encampment (which would be easy as the land is open and unfenced) but unauthorised development.

55. The Claimant acknowledges that an injunction is not here being sought against unauthorised encampments on a significant scale as was the position in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47. However, submits the Claimant, though on a lesser scale, the Supreme Court's guidance is nevertheless relevant where a court is considering a species of contra mundum injunction. I was urged that the safeguards which the Supreme Court suggested would provide a degree of protection.

56. The Claimant submitted that following the decision of the Court of Appeal in *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, that even if the Court refused to grant an injunction against the Fifth Defendant, that the Fifth Defendant would still be bound to comply with any order the Court made against Persons Unknown. The same must be true of Mr Green. Even though Mr Green is clearly known but has not been joined as a Defendant, he clearly appears to fall within the defined class of persons unknown for the Fourth Defendant. In that regard, the Supreme Court (in paragraph 221) considered that the persons enjoined by its terms ought as far as possible be identified. Whilst I would have jurisdiction to grant an injunction against persons unknown as limited by the headnote to this case, I have in mind in particular the guidance of the Supreme Court in the *Wolverhampton* case at [167] that I should only grant such an injunction if there is a compelling need in the light of the particular facts about unlawful activity within the local authority's boundaries. In accordance with paragraph 218 of the Supreme Court, any threat must be "real and imminent". In that regard, as noted above, it is significant that the apprehended unlawful activity is unlawful development and not unauthorised

encampment as the former is likely to involve a strong nexus with the land in order to reap a benefit from any development whereas the latter need entail no nexus with the land. One feature of this case is the fact that unauthorised encampment is not alleged whereas much of the Supreme Court's guidance was focused on the risk of unauthorised encampment. I take full account of the gravity of any unauthorised development of this land. By analogy with paragraph 203 of the Supreme Court judgment, the absence of engagement and/or attempts to engage by the Claimant with the Fifth Defendant or Mr Green has already been noted and is a matter which I need to take into account in considering whether or not to grant relief. I was not addressed on whether or not byelaws might assist in this case even though the Supreme Court clearly considered such measures to be of potential relevance. I also take account of the fact that it might be said that the Company or Mr Green might encourage a third party to carry out the unlawful development and perhaps to transfer the Land to such third party in order to defeat the Claimant's planning controls but, first, I have not found a sufficient probability of either scenario to grant any injunction against the Company. Also, Mr Green will be aware from the course of this case that he will be subject to immediate legal action if there were a reasonable suspicion that he is involved in such unauthorised development. As the owner and sole director of the Company, it must be assumed that he is responsible for its actions. Also, the Second and Third Defendants are subject to the restraints set out in the Order. In all the circumstances in my judgment the "compelling need" of which the Supreme Court spoke (paragraph 236) is not present and I refuse the injunction in so far as it is sought against the Fourth Defendant.