Neutral Citation Number: [2020] EWHC 2040 (QB)

Claim No. QB-2020-002520

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COURT 37 REMOTE HEARING

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 27 July 2020

Before:
MR JUSTICE FORDHAM

- -

Between :

BRENTWOOD BOROUGH COUNCIL	**Claimant**
- and -	
(1) JACK THURSTING **(2) PERSONS UNKNOWN (UNDERTAKING OPERATIONAL DEVELOPMENT ON THE LAND KNOWN AS "LAND ON THE NORTH SIDE OF CHELMSFORD ROAD" HM LAND REGISTRY TITLE EX981807 WITHOUT A LAWFUL PLANNING CONSENT AND/OR SEEKING TO CHANGE THE USE OF THE LAND INCLUDING A CHANGE IN USE TO A GYPSY CARAVAN SITE WITHOUT LAWFUL PLANNING CONSENT**	**Defendants**

- -
- -

CAROLINE BOLTON (instructed by SHARPE PRITCHARD LLP) for the **Claimant**
BEN DU FEU (instructed by ET PLANNING) for the **First Defendant**
The **Second Defendants** did not appear and were not represented

Hearing date: 24 July 2020
Judgment as delivered at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM:

Introduction

1. This is the return date in relation to an order for interim relief granted by Cutts J on Friday 17 July 2020. The injunction, ordered by the judge on an interim basis on that date, was an injunction pursuant to section 187B of the Town and Country Planning Act 1990. That provision confers on the court an original jurisdiction to grant an injunction in circumstances where the planning authority considers it necessary or expedient to apply to the court for an injunction in order that an actual or apprehended breach of planning control be restrained by injunction. Under section 187B(2) the court may grant such an injunction as the court thinks appropriate for the purposes of restraining the breach. And under section 187B(3), and pursuant to rules of court, such an injunction can be issued against a person or persons whose identity is unknown. The leading authority so far as the approach to injunctions under that section is concerned is the judgment of the House of Lords in South Bucks District Council v Porter [2003] UKHL 26 [2003] 2 AC 558. That was a case in which injunctions were made, by various courts, which required people to move from land where they had set up in caravans. On the face of it, it was concerned with injunctions which were 'final' in their effect as opposed to 'interim' pending trial, though there was as I shall explain later some reference to the interim injunction approach.

2. The land to which this case relates is known as the north side of Chelmsford Road at Blackmore. It is a piece of land which is described in the evidence. It was purchased by the first defendant and belongs to him. He bought it in October 2018 and in his witness statement he describes that as having been a purchase of the land for development. Although he owns the land, the land is greenbelt land and it is land whose development is the subject of planning control legislation and relevant guidance, including the particular protections applicable to greenbelt land, all of which in the public interest is the genuine and legitimate concern of the claimant as the local planning authority.

Mode of hearing

3. The mode of hearing in this case was by telephone hearing. Cutts J had herself directed that this return date hearing would be a remote hearing, subject to direction to the contrary by the judge dealing with the matter. I made no contrary direction. The parties confirmed that, for their part, telephone conference hearing was the preferred approach to this case: in order to minimise the need for people to travel to or be present in a physical courtroom at this post lockdown time of the Covid-19 pandemic. Because the open justice principle is so important, I will address it explicitly. Not only am I quite satisfied that there has been no prejudice to any interest of any party in this case, I am also satisfied that the open justice principle has been secured. This was a public hearing. I heard submissions in exactly the way I would have done had we all been present in the courtroom. The hearing was published in the cause list as was its start time. The cause list contained a contact email address which could be used by any member of the press or public who wished to have the opportunity to observe this hearing by dialling in. Indeed, I am satisfied that this mode promoted the position of anyone who wished to do so since they themselves would not need to travel to or be physically present in a court room in order to do so. Finally, this judgment will of course be available in due course should anyone wish to access it as being a judgment delivered in public, in the

public domain. The telephone hearing itself was recorded and the recording preserved for access should it be needed.

Outcome

4. The order which Cutts J made in this case prohibits certain activities in relation to the land. I am asked by the claimant to continue the order by making a substituting order with substantially the same content. The first defendant who appears by counsel asked me to discharge the order or as an alternative to impose a narrower and temporally limited order. I am persuaded by the claimant that it is appropriate to continue the order, substantially in the terms sought. In this judgment, I will explain the reasons why I have arrived at that conclusion, with the assistance of the evidence and the written and oral submissions by both parties. I am not satisfied that it would be appropriate to discharge the order, or tailor it in a more narrow way, or limit it temporally. Indeed, I am quite satisfied that none of those courses are appropriate and the continuation of the order is the necessary and justified step in the interests of justice, in a case which raises a serious issue to be tried and in my judgment a strong prima facie claim, and in the light of the 'balance of convenience and justice' and the public interest.

About the Order

5. At the end of this judgment, and having had the opportunity to consider with the parties the drafting of the order, I will set out the terms of the order that I am making today so that anybody reading this judgment will be able to see those critical terms. I say immediately that one of the express terms, that in any event would apply to a continued but interim order, is that the defendants – and that includes any "persons unknown" falling within the category described as the named second defendant as well as the first defendant – have the right to ask the court to vary or discharge the order.

6. The order prevents the first defendant as the landowner, and prevents the identified persons unknown, from – and I paraphrase – using the land in breach of planning control or carrying out works on it in breach of planning control and, in particular, not doing a series of activities relating to the land. They include, for example, not bringing hardcore onto the land or material for the preparation of hard services surfaces; not bringing caravans or other similar accommodation; not living in caravans or other similar accommodation on the land; the order also extends to prohibiting the installation or connection of utilities (water electricity or sewage) on the land for the purposes of facilitating human habitation or occupation; the order prohibits the undertaking of development of the land without permission; it prohibits the bringing onto the land of plant or machinery used or capable of being used for removing trees or developing the land into what is called a 'gypsy travellers' site' or any other purpose relating to the development of the land.

Wider than intrinsic unlawfulness

7. It is common ground between the parties that some of those prohibitions bite on activities not necessarily intrinsically and of themselves breaches of planning control. In some respects that is because the prohibitions relate to what may be action prior to a breach: such as bringing apparatus or machinery onto the land for development of the land. In other respects it is because the prohibition – for example on development of the land without permission – would on the face of it bite in relation to a development

that has 'statutory planning permission' under the statutory scheme. And, for example, the connection of utilities – it is common ground – is not necessarily intrinsically and of itself a breach of planning control.

8. However, it is also common ground that – in principle and in an appropriate case – an order pursuant to section 187B can prohibit actions which are not intrinsically of themselves necessarily a breach of planning control. There are two obvious reasons for that. The first is that when Parliament conferred the function of the planning authority seeking, and the court granting in an appropriate case, an injunction as being 'for the purpose of restraining an actual or apprehended breach', it is obviously within that statutory purpose that an order could seek to forestall a step which an individual might take, in a context involving an apprehended breach, but without itself constituting such a breach. Anticipatory or preparatory steps are an obvious example. Secondly, an order of the court needs and must be intended to set out clearly and in a concrete way what actions are being prohibited. So, the statutory provision does not merely serve to provide the court with a mechanism of backing by contempt powers the legal obligations already existing within the statutory scheme. The statutory power goes further and allows, in a clear and concrete manner, the court to injunct steps where it is necessary and appropriate to do so for the purpose of restraining an actual or apprehended breach. Mr Du Feu's submission on behalf of the first defendant, while accepting that the statutory reach extends in that way, was that "clear and cogent reasons" would be needed to justify injuncting action which on its face is not necessarily intrinsically a breach of planning control. It is not necessary for me to decide whether he is right in law about that, because I have adopted that approach in this case and, having adopted that approach, I am fully satisfied that the injunction and its terms are necessary, justified and appropriate. In those circumstances it is not necessary for me to get into whether some lesser standard should apply to the injunction of intrinsically 'non-breaching' conduct.

A caravan site

9. At the heart of this case, on the evidence before the court at this necessarily interim stage, is an evident truth so far as the first defendant's position is concerned. He makes clear that he intends to pursue what he calls 'development' of his land; and that he intends to do so by having caravans on the site, occupied on the site; and by taking steps to achieve that outcome. I put that at the heart of the analysis because, as it seems to me, the difference between the parties is that the first defendant maintains that all that he is doing and wishes to do, and wishes to be allowed to continue to do, is to take legally permissible steps within the statutory planning control mechanism to achieve a "holiday caravan site", with its appropriate certification. The "use" of land for a holiday caravan site is something which has 'statutory planning permission' under the Town and Country Planning (General Permitted Development) (England) Order 2015, by virtue of article 3(1) read with the applicable schedule (Schedule 2) Part 5 paragraph A and A.2, themselves read with Schedule 1 to the Caravan Sites and Control of Development Act 1960. It comes to this. To "use" land for a holiday caravan site, where the land has a certificate from an exempted organisation (paragraph 5 of Schedule 1) is a use which does not breach of planning control. In this case there is no extant certificate; moreover, there is a clear issue as to what steps would be taken in the course of arriving at the outcome of a holiday caravan site. But that is the essence of the first defendant's position. He says that that is what he has been pursuing, with specialist

planning advice, and that he should be permitted to continue down that course, dealing along the way with planning controls. A central concern from the claimant's perspective relates to the prospect of what it sees as a "static caravan site", by way of a "development" and "use" of the land. It is common ground that such a "use" would not be a compliant, without the relevant permissions, with the planning controls. It is really for that reason that I put the pursuit of what is called a development relating to caravans and occupation on this land as being central. I add that "operational development", that is to say building operations or other operations, are each activities which in principle require planning permission pursuant to sections 55 and 57 of the 1990 Act.

The first defendant's position

10. I was greatly assisted by Mr Du Feu's focused submissions, in writing and orally, on behalf of his client. He seeks the discharge of the interim relief order and invites me not to continue it, essentially on two bases.

i) In the first place, he submits that there is no "serious issue to be tried", so far as the statutory purpose of restraining an actual or apprehended breach of planning control is concerned. He relies on the fact that the first defendant has now put before the court, for this return date, witness statement evidence which tells the court that the first defendant's position is as follows. Having failed for a second time on 5 June 2020 to obtain planning permission for a 3-bed bungalow on the land, the first defendant decided to 'develop' the land – as he puts it – but in another way. Instead of appealing and pursuing the bungalow route, he decided to pursue the development of a holiday caravan site. He did so, conscientiously and carefully, relying on specialist planning advice. All the various activities that have concerned the claimant are explained by reference to that intention and undertaking. That includes the 'mini digger' and 'cable laying' activity observed in the middle of July 2020, leading to a site visit on 16 July 2020. It explains, says the first defendant, the utilities activity relating to water supply and drainage that was taking place the next day Friday 17 July 2020, the day on which the claimant sought an out of hours injunction from Cutts J, granted without notice. The first defendant's position is that a holiday caravan site is "use" which is benign and compliant. He accepts that a septic tank installed on or around 29 April 2020 was a breach of planning control that he says was "inadvertent". He has expressed the desire and wish to regularise the position by obtaining "retrospective" planning permission for that septic tank. As Mr Du Feu further submitted on his behalf, he should be left in a position now to be able to pursue his holiday caravan site project, which may or may not involve the use of the septic tank, or any operational or other relevant development, but if it does the first defendant should be left to deal with the planning authority, by seeking and obtaining the appropriate consents at the appropriate time. The evidence, submits Mr Du Feu, is not sufficient in this case to give rise to a serious issue to be tried.

ii) Secondly, and alternatively, he submits that the injunction which he accepts will necessarily follow in this case if he is wrong as to 'serious issue to be tried', is one that should be much narrower and more tailored. In the draft which he has put before the court as his fallback position, he formulates the injunction as one which states that 'the defendants are prohibited from carrying out development on the land in breach of planning control'. He accepts that a narrower injunction

could be designed in a different way. But he maintains that in this case it is wrong in principle, or unjustified in the circumstances and on the evidence, to do more than track the obligations as they already stand under the statutory scheme, albeit with the added threat of contempt for breach. He urges me not to take comfort from the 'liberty to apply' mechanism in the order, requiring an application should the claimant not be content with any new set of circumstances, with the further cost and delay of a further hearing. He submits that in this case in principle no act should be caught by an order unless it is intrinsically and necessarily of itself a clear breach of planning control. He supports those submissions with the contention that a narrower order would also be a clear order which would have that additional virtue.

11. As I have already said, I do not accept those submissions. I cannot accept the submissions in either respect. In my judgment, it is and remains clear in this case that there is a serious issue to be tried. Moreover, in my judgment, the balance of convenience and justice comes decisively down in favour of the broader order continuing in substance the injunction imposed without notice.

South Bucks DC v Porter

12. I need say little more about the legal approach, except to emphasise the passages in Porter which I have found particularly relevant and helpful. Lord Bingham, for the House of Lords, describes the jurisdiction that I am exercising at paragraphs 27 onwards of Porter.

    i) In paragraphs 27, 28 and the beginning of 29 he explains that the court is exercising – "judicially" – a "discretionary power", as to both the "whether" question (whether to impose an injunctive order) and the what question (if so, what specific "terms" are appropriate). He explains that this is an "original", and not a "supervisory" jurisdiction: the planning authority decision that it "consider[s] it necessary or expedient for any actual or apprehended breach of planning control to be restrained by an injunction", so as to "apply to the court for an injunction", is not a decision being "review[ed]" as "an exercise of public power", on reasonableness grounds. Lord Bingham explains that: "the court is not obliged to grant an injunction just because a local authority considers it necessary or expedient for an actual or apprehended breach of planning control to be restrained by injunction and so makes application to the court".

    ii) In the rest of paragraph 29, Lord Bingham goes on to make a number of important further observations. He says "the power must be exercised with due regard to the purpose for which the power was conferred: to restrain actual and threatened breach of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for". He then describes the situation which "will point strongly towards the grant of an injunction", namely: "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". Finally, in that same paragraph, he says this: "in all cases the court must decide whether in all the circumstances it is just to grant the relief sought against the particular defendant".

iii) At paragraph 38 of his speech in Porter, Lord Bingham endorses the lengthy earlier passage set out at paragraph 20. From that I draw three points for the purposes of this judgment (though I have had close regard to the entirety of that passage). The first point is where it was said, in the passage being endorsed, that "the judge should not grant injunctive relief unless [the judge] would be prepared if necessary to contemplate committing the defendant to prison for breach of the order". Secondly, within the passage endorsed, is the recognition that it is "relevant" that a local planning authority has decided to seek the relief, as "the democratically elected and accountable body principally responsible for planning control in their area"; though "the relevance and weight of their decision" will depend on the circumstances. Thirdly, and finally, in a passage in which Mr Du Feu specifically relied, the endorsed passage says this: "Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought… but also that it does not impose an excessive burden on the individual whose private interests… are at stake".

13. I have emphasised those passages because I found them to have particular resonance, and be of particular assistance, in relation to the exercise of my jurisdiction. I do, however, remind myself that I am only at the interim relief stage of these proceedings. One of the important safeguards when a without notice application is granted is that a defendant can, if they wish, seek to defend the continuation of the interim relief, at a hearing where both parties can be heard. That is the position that the first defendant has adopted in the present case. I am not, however, holding a trial or deciding on the grant of a final injunction. It is relevant to my exercise of judgment to recall that I am dealing with interim relief. The parties in this case accept that the "serious issue to be tried" and "balance of convenience and justice" approach is in principle the relevant one. I said earlier that there was a passage in Porter that touches on interim relief. It is in paragraph 17 of Lord Bingham's speech where he cites from a 1997 Good Practice Guide (Enforcing Planning Control: Good Practice Guide for Local Planning Authorities, issued by the Department of Environment, Transport and the Regions). The passage to which Lord Bingham there refers reflects the fact that the court will be "assessing … 'the balance of convenience' in the decision whether to grant injunctive relief on the [local planning authority]'s application" – I interpose: where that relief is interim relief – and "the court will have to weigh the public interest (which the [local planning authority] represents) against the private interests of the person or people whom the [local planning authority] seek to restrain".

Basis of my conclusions

14. I will explain why I have concluded that there is a serious issue to be tried and indeed in my judgment a strong prima facie case. I have also concluded that in this case, both the making of the order and the shape of the order – including the 'not intrinsically breaching control' conduct covered by the order – is justified and necessary having regard to the balance of convenience and justice, having in mind the position of the first defendant and the second defendant (the persons unknown), and having regard to the public interest. I turn to the substance of the case and the considerations which led me to all of those conclusions. I emphasise I am not conducting the trial and I am not making findings of fact.

15. The first feature of the case, on the face of it, is the first defendant's clear resolve to pursue the development of this land. That was the purpose of the purchase on the evidence. There was a planning permission application refused in March 2019 for a bungalow which was appealed unsuccessfully and rejected in September 2019. There was then a subsequent further application for planning permission again for a 3-bed bungalow, which was refused on 5 June 2020. It is not clear to me whether or not that decision is currently under appeal, but it is not material to my evaluation whether it is or whether it is not.

16. The next feature is the one I described at the beginning, which is that there is the resolve to develop the site in order to have caravans on it which would be occupied, and to ensure that utilities are available to the site to that end. That does give rise to serious concerns as to what precisely is in mind and is being pursued, and may be the outcome. It also gives rise to serious concerns as to the steps that would be taken in order to get to that outcome.

17. The next feature, relevant to all of this on the face of it in my judgment, is the fact that in parallel with the pursuit of planning permission for a bungalow – that having been rejected on appeal in September 2019 – the first defendant installed on the site a septic tank. That septic tank and its installation was an action which, on the face of it, required planning permission. No planning permission was sought or obtained. The first defendant's position, so far as that is concerned, is to state that that breach was "inadvertent", and to say that he wishes and is willing to have the position regularised by means of "retrospective" permission. That, on the face of it viewed objectively, is conduct involving a preparatory step – with a view to occupation of the site – which itself required but did not obtain planning permission; and a mindset which involves taking the step and then speaking of 'regularisation after the event'. I repeat I make no finding of fact. But that evidence is a relevant feature of the consideration both of the serious issue to be tried and as to the justice and proportionality of the order sought in the public interest.

18. The next feature of the case is that although the first defendant states that he has, since being refused planning permission on 5 June 2020, been pursuing conscientiously a plan to arrive at the outcome of a holiday caravan site, with proper certification and acting compliantly with planning control, and although he states that all of that has been done in conjunction with specialist planning advice, there is as things stand no 'transparency' from him vis-à-vis the local planning authority in relation to any of that. I have been shown no document which involved him describing to the local planning authority what he is doing, or on what basis. This, moreover, in circumstances where there has over the course of time been a long sequence of interaction between the first defendant and the claimant. That included not only the two failed applications for planning permission, but also the issuing on 30 April 2020 of a temporary stop notice under section 171E of the 1990 Act for 28 days, to restrain engineering steps or the introduction of hard-core materials and other matters in relation to the land. That notice followed on, the day after the septic tank installation on site had been recognised.

19. Thus, there been no transparency between the first defendant and the claimant so far as this description of his intentions and steps is concerned. But there has also been no transparency with this court. The first defendant had, and has taken, the opportunity to put forward evidence before the court in relation to this matter. He has included his description. But no document has been produced which supports that description and

shows what he was doing and when he was doing it. I find it impossible to believe that those documents do not exist, and would not be available, if his description is reliable and one which should be taken at face value. But I am not prepared, for the purposes of this interim relief application, to treat the first defendant's description as being a determinative answer, in the light of the serious concerns which in my judgment viewed objectively arise in this case.

20. The next feature of the case is that, although reference is made to the holiday caravan site outcome, there is – as things stand – no certificate so as to trigger the protection of paragraph 5 of Schedule 1 to the 1960 Act. Therefore, putting caravans on the land – as things stand – would not be a benign and compliant act. Nor, depending on what they are, would preparatory activities with a view to arriving at the outcome of having a holiday caravan site be. To take an obvious example, attaching and beginning to utilise the existing septic tank on the premises would be a step intimately linked to an installation which is and remains in breach of planning control.

21. The next feature of the case, which I regard as particularly weighty, concerns the evidence put forward in support of the original application in a witness statement of what happened the day before the injunction was sought. In circumstances where a 'mini digger' and 'cable laying' had been observed on 15 July 2020, the site visit on 16 July 2020 led – on the witness statement filed on behalf of the claimant – to a phone conversation between the first defendant and the planning officer. The evidence states that the first defendant told the planning officer that he would undertake 'no further works', pending the outcome of 'an appeal' against the refusal on 5 June 2020 of planning permission for the bungalow. The first defendant's witness statement subsequently filed on 23 July 2020 for this hearing does not deal with that conversation at all. On the evidence, that is what was said by the first defendant. Moreover, it was against the backcloth of that conversation and that statement by the first defendant, that the claimant was then understandably so alarmed to see further works taking place on the land, the very next day. So it was that they went, that evening, to the out of hours judge to get the injunction, to ensure that nothing untoward would happen over that weekend. I have found it impossible, on the face of it, to square the evidence of that conversation with the benign description put forward by the first defendant in relation to what he says is going on in this case. I repeat: his description is that he made a decision 'not to appeal' the refusal of 5 June 2020; instead he decided to go another way and has acted in the weeks since then, in conjunction with specialist advice, to take steps which are benignly and compliantly intended to lead to a certified holiday caravan site. That description is one which, on its face, jars with a conversation describing 'no further works' being undertaken, pending the resolution of 'an appeal' relating to the bungalow position. It also reinforces the point I made earlier so far as transparency is concerned. I do not need to repeat, but I will repeat, that I am not making a finding of fact about what has happened in this case. But I do need to evaluate the evidence in order to decide whether the continuation of this order with its reach is justified, in all the circumstances.

22. All of those matters are quite sufficient in my judgment to lead to the conclusion both that there is a strong prima facie case, going well beyond a serious issue to be tried; but also that the balance of convenience and justice, having regard to the public interest, comes down firmly in favour of taking clear and decisive injunctive action to protect the public interest by preventing the sequence of steps identified in the order.

23. Further features in the case include the fact that in October 2019 a third party, a Mr Saunders, is recorded as having taken pre-application advice from the local planning authority in relation to this land and the installation of two static caravans on this land. The submissions made by Mr Du Feu is that the first defendant 'has no knowledge of Mr Saunders'. That is not a matter, again, that is in evidence. But it is a relevant feature, for the claimant and for the court, in my judgment, that the idea of 'static caravans' on this site as an alternative to a bungalow is one that has been ventilated, and ventilated in the context of what appear to be third-party occupiers (or possibly purchasers) all of which taking place subsequent to the purchase of this land by the first defendant 'for development'.

24. When I ask myself, recalling Porter, 'does it appear on the face of it that an apprehended breach will occur unless effectively restrain?', my answer is yes. When I ask myself 'is it the case that nothing short of this injunction will provide effective restraint?', the answer is again yes. When I ask 'in all the circumstances, is it is just in this case to grant the relief sought?', the answer is also yes.

The first defendant's father

25. A contentious further factor in the present case concerns the first defendant's father. The claimant regards it as relevant that the claimant's father, himself as owner of greenbelt land, in circumstances of failed applications for planning permission, had taken steps which resulted in a caravan site in breach of planning control. I have considered the material that relates to that matter. The witness statement of Richard Bates for the claimant describes the position in this way: "The first defendant's father last year sold a site in Brentwood to travellers which was unlawfully developed as a travellers' site with 22 caravans on the site despite the land being within the greenbelt. The site was sold to travellers following the first defendant's father failing to obtain planning permission on the site residential housing." Mr Du Feu submits that that was an entirely irrelevant matter and no reliance should have been placed on it; it is evidence relating to a different individual and different land; and it is unjust and unjustified to arrive at any conclusion based on extraneous material of that kind. In my judgment, the claimant was fully entitled to take into account that as an item of relevant evidence. I am not, as I have said, conducting a "supervisory" review of the claimant's decision-making so far as the pursuit of this injunction is concerned. But I reject the criticism that is made of the inclusion of that within the claimant's witness statement. In my judgment this is also a factor in the case that is relevant for my consideration. I fully accept the importance of caution and circumspection, so far as evidence of that kind is concerned. It could not, for example, possibly be decisive or the basis of an injunction that evidence of that kind relating to a family member on another site is available. But as I have already explained the other features of this case amply support the concerning conclusion that justifies this injunction by reference to the 'serious issue' and 'the balance of convenience and justice' having regard to the public interest. I have taken account of the further information relating to the first defendant's father, though it has no material bearing given the conclusion at which I would in any event have arrived.

The way forward for the first defendant

26. So far as the way forward for the first defendant is concerned it is relevant, in my judgment, that two steps are open to the first defendant if he wishes to pursue, compliantly with planning control, and without taking steps and then dealing on a

backward-looking 'regularisation' basis with those steps. The first course that is open to him is to approach, transparently, the local planning authority in relation to what he is doing and why he is doing it, so that the benign and compliant nature of that conduct can be evaluated. The second course that is open to him is to apply to vary the order, on evidence, should it be said that there is justification for relaxing one or more of the restrictions on the basis of what the first defendant is able to evidence and in the light of the position taken at that time by the claimant. That, in my judgment, is an important and relevant protection and it is that, in combination with the interim order, that reconciles the various competing interests together with the public interest and constitutes the necessary and proportionate fair balance at this interim stage in these proceedings.

Duration

27. I am not persuaded that it would be appropriate to limit the order to a period of, say, "one year" in duration. As Ms Bolton cogently submits, this is an interim order in proceedings, because a claim has been issued for a final injunction. Steps can be taken to bring that claim to trial with the court making appropriate findings for the purposes of whether to issue a final injunction. Consideration could then be given to questions such as duration. This order is 'holding the ring' pending the resolution of the claim. Whilst I respect, as any court would, the decision of any litigant as to where they wished to focus their energy and resources, it was open to the first defendant to resist the order by means of defending the substantive application on full evidence before a court, rather than taking the immediate course of the 'return date' a week after the original imposition of the injunction, and asking that the interim injunction be discharged.

Breadth and clarity

28. I return to the breadth of the order, and the 'not intrinsically breaching control' steps which are caught by the various limbs within the order. I am quite satisfied that the ambit and breadth of the order is not only available in principle but justified on the facts of this individual case. An order which did no more than repeat or track, backed with contempt sanctions, the existing contours of the legal obligations under the statutory scheme would in my judgment be inadequate in the present case. This case illustrates the implications of 'grey areas', the significance of intermediate or anticipatory steps, the uncertainties that arise out of motivation and purpose, and the damaging implications of taking steps on the basis of then addressing 'retrospectively' questions of 'regularisation'. I entirely accept Mr Du Feu's submission as to the importance of an order being clear. In my judgment, this order is clear. It has the virtue of spelling out, in concrete terms, steps which may not be taken by the first defendant. Each of those steps, in my judgment, is justifiably injuncted on the facts and circumstances of the present case. The order avoids controversial and contentious unilateral steps being undertaken by the first defendant. It promotes clarity at a time of justified concern and does so for as long as that continues, until these proceedings are resolved.

29. But there is a second dimension, so far as the reach and content of the order is concerned. The order, as the statute envisages, prohibits not only the first defendant but the category of 'persons unknown' undertaking operational development or seeking to change the use of this land. That would include an interested party or third party, whether or not it is an individual that the first defendant says that he knows or has dealings with. This order, when originally made, was served on the second defendant

by being fixed to a post on the land itself, as will my order be. It would not promote the public interest to have an order nailed to a fence that states, backed with contempt sanctions, that no-one must 'breach planning controls'. What is needed in this case is a series of clear and concrete descriptions of actions, so that there is no room for doubt that the taking of particular steps – linked to the apprehended development of the land in breach of planning controls – cannot be undertaken compliantly with the order. Any person who wishes to undertake any step as is described in the order knows that they need proactively to raise with the local authority, and if necessary with this court based on evidence, the step that they wish to take and why it is that that step is one that does not give rise to legitimate concerns as to apprehended breach of planning control.

Finally

30. I have set out my reasons at length. I have done so because I regard this as an important case to all parties and because of the careful and helpful submissions in writing and orally that I received from both parties. There is one footnote that I wish briefly to address and that is the use in the order made by the judge of the phrase "gypsy travellers' site", something which was the subject of comment in the written submissions on behalf of the first defendant. It has not been necessary to hear oral submissions relating to that. The word "gypsy" is one that is used in the Equal Treatment Bench Book, but what is emphasised in the Bench Book is that, if a court is describing an individual or group who are before the court, it is important to approach language with sensitivity because there are members of communities who find certain terms including the term "gypsy" offensive, whereas others are proud to use that term (see Benchbook page 172 paragraph 45). In the Porter case, Lord Bingham used the word "gypsy", throughout his judgment, to describe the respondents in that case. I emphasise that the word "gypsy" when used in the order in this case is not describing a group of people, who are before the court, without approaching sensitively the question of how they would wish to be identified. It is a description that will be understood, alongside the word "travellers", and in my judgment is appropriately included. But I did want to say, to anyone who may consider the inclusion of that word to be a sensitive matter, that I have considered the word and it is certainly not intended to be used in an offensive or insensitive way in relation to any individual or group, still less anyone who is before me at this hearing. That is the footnote. What I propose to do, having now given my reasons, is to engage with Counsel as to the precise structure and terms of the order and then deal with any further matters that may arise from my judgment and my order. But, for all those reasons, the order made by Cutts J is, in substance, continued.

Costs

31. A consequential matter arose as to costs. The claimant's position is that it should have entirety of its costs since the inception of these proceedings in its application to Cutts J. The reason given is the indication from the first defendant that this hearing may prove to be the end of this matter. The first defendant's position is that all costs should be reserved and dealt with at some subsequent stage, depending on what the ultimate outcome is whether or not that involves a further hearing. I am quite satisfied that the just solution falls between those two positions. So far as the application before Cutts J is concerned that is and remains, in my judgment, properly a matter of costs reserved until the ultimate outcome of the proceedings. A without notice application was granted and costs were properly reserved. The position so far as the costs are of today are concerned does give rise, though, to a distinct point. The costs of today's hearing have

arisen because the first defendant took his stand on resisting the continuation of this order. Had continuation been agreed, the costs of this hearing would not have been incurred. He is entitled to take that position and took that position. It has all been argued out before me and I have determined it, and on that matter the claimant has squarely succeeded. I see no reason to reserve the costs of today and every reason to grasp that nettle and deal with them today. Given that the costs schedule does not distinguish between the various features, and in all the circumstances, I am not going to summarily assessed costs today. The first defendant shall pay the claimant's costs of and incidental to today's hearing to be the subject of detailed assessment if not agreed.

The order

32. I made the following order:

> **PENAL NOTICE: IF YOU THE NAMED DEFENDANTS AND/OR PERSONS UNKNOWN DISOBEY THIS ORDER YOU MAY BE HELD IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR FINED, OR HAVE YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.**
>
> **IMPORTANT**
> **NOTICE TO THE DEFENDANTS**
> **(1) You should read the terms of this Order and the guidance notes very carefully. This Order prohibits you from carrying out the activities set out in this Order and obliges you to cease doing certain acts set out in this Order. You are advised to consult a solicitor as soon as possible.**
> **(2) You have the right to ask the Court to vary or discharge this Order.**
> **(3) If you disobey this Order, you may be found guilty of Contempt of Court and may be sent to prison or fined. In the case of a Corporate Defendant, it may be fined, its directors may be sent to prison or fined or its assets may be seized.**
>
> **THE ORDER**
> An Application was made on notice on 24 July 2020 by Counsel for the Claimant to continue the Order of Mrs Justice Cutts dated 17 July 2020. The Judge heard the Application and read the witness statements identified in Schedule A.
>
> **UPON HEARING** Counsel for the Claimant and Counsel for the Defendant
>
> **AND UPON** reading the witness statements listed in Schedule A and accepting the undertakings listed in Schedule B
>
> **THE INJUNCTION**
>
> **IT IS ORDERED THAT UNTIL FURTHER ORDER:**
>
> 1. In relation to Land known as "Land on the North Side of Chelmsford Road" HM Land Registry Title number EX981807 ("the Land"), as shown edged in red on the attached plan at annex 1, the Defendants, whether by themselves or by instructing, encouraging or permitting any other person, must not use the Land in breach of planning control, or carry out works to the Land in breach of planning control, and in particular, must:
>   (a) not bring onto the Land any hardcore nor bring onto the Land any other material for the preparation of hard surfaces;
>   (b) not bring onto the Land any caravan, mobile home, motor home, portacabin or similar accommodation;
>   (c) not station on the Land any caravan, mobile home, motor home, portacabin or similar accommodation for the purposes of human habitation or residential occupation or for any other purpose in breach

of planning control;

(d) not reside on the Land or any part thereof, whether in a caravan, mobile home, any other kind of residential accommodation or from using the Land as a gypsy travellers' site;

(e) not bring onto the Land any portable structures including portable toilets or any other items and paraphernalia for purposes associated with human habitation or residential occupation or any other purpose in breach of planning control;

(f) not construct any building or any form of residential accommodation on the Land;

(g) not install or connect on the Land any services including running water, electricity or sewage connections for the purposes of facilitating the use of the Land for human habitation or residential occupation or otherwise carry out works to the land associated with or in preparation for its use for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation or otherwise in breach of planning control;

(h) not undertake any development of the land as defined by section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission from the Claimant or, on appeal, from the Secretary of State;

(i) not bring onto Land or any part thereof or keep on the Land any plant or machinery used or capable of being used for the removal of trees and the development of the land as a gypsy travellers' site or for any other purpose relating to the development of the Land.

IT IS FURTHER ORDERED THAT:

2. This order replaces the Order of Cutts J dated 17 July 2020.

ALTERNATIVE SERVICE

3. Service of this Order on the Second Defendant shall be effected by the posting of copies of the said Order, in a transparent waterproof envelope in a prominent position at the entrance to the Land and such posting shall be deemed to be good and sufficient service on the Second Defendant of the said Order on the date it was so affixed.

COSTS OF THE APPLICATION

4. The costs of the application dated 17 July 2020 and other costs associated with the claim shall be reserved to the final hearing. The First Defendant shall pay the Claimant's costs of and incidental to the hearing dated 24 July 2020, to be the subject of detailed assessment if not agreed.

GUIDANCE NOTES

EFFECT OF THIS ORDER – THE DEFENDANTS

5. A Defendant who is an individual who is ordered not to do something must not do it him or herself or in any other way nor must he/she do it through others acting on his/her behalf or on his/her instructions or with his/her encouragement.

INTERPRETATION OF THIS ORDER

6. In this Order references to 'the Defendant' means both or all of them.

7. A requirement to serve on 'the Defendant' means on each of them. However, the Order is effective against any Defendant on whom it is served.

8. An Order requiring 'the Defendant' not to do anything applies to all Defendants.

9. Without prejudice to the foregoing, the 'Persons Unknown' identified as the Second Defendant includes (without limitation) anyone on the land carrying out works of development, or undertaking the activities prohibited in paragraph 1 of this Order.

10. In the Order, "the Land" means the Land known as "Land on the North Side of Chelmsford Road" HM Land Registry Title number EX981807 "the Land" described under that title as Land edged in red on the attached Plan.

COMMUNICATIONS WITH THE COURT

11. All communications with the Court about this Order should be sent to Room WG08, The Royal Courts of Justice, Strand, London, WC2A 2LL. The telephone number is 020 7947 6010. The offices are open between 10am and 4.30pm Monday to Friday.

12. **Pursuant to CPR Part 40.7(1) this order takes effect from the date it was made, i.e the date on the face of the Order. In the light of the Covid-19 pandemic the court staff are working remotely. The sealed Order will be available from the court office of the Queen's Bench Division or Administrative Court Office.**

SCHEDULE A

The Claimant relied upon the statement of Richard Bates dated 17 July 2020.
The First Defendant relied upon the statement of Jack Thursting dated 22 July 2020.

SCHEDULE B

Undertakings given to the Court by the Claimant through Counsel

1. As soon as practicable the Claimant will serve on the Defendants a copy of the sealed Order.

27 July 2020