Neutral Citation Number: [2023] EWCA Civ 727

Case No: CA-2023-000867

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
THE HONOURABLE MR JUSTICE WAKSMAN
[2023] EWHC 1076 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 June 2023

Before:

SIR KEITH LINDBLOM
(Senior President of Tribunals)
LORD JUSTICE DINGEMANS
and
LADY JUSTICE WHIPPLE

- -

Between:

Braintree District Council	**Claimant/ Appellant**
- and -	
(1) Secretary of State for the Home Department **(2) Secretary of State for Defence**	**Defendants/ Respondents**
- and -	
(1) West Lindsey District Council **(2) Gabriel Clarke-Holland** **(3) Rother District Council**	**Interveners**

- -
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Mr Wayne Beglan and **Mr Jack Barber** (instructed by **Sharpe Pritchard LLP**) for the **Appellant**
Mr Paul Brown KC and **Mr Nicholas Grant** (instructed by **Government Legal Department**) for the **First Respondent**
The **Second Respondent did not appear and was not represented**
Mr Richard Wald KC and **Mr Jake Thorold** (instructed by **Legal Services Lincolnshire**) for the **First Intervener** by written submissions only
Mr Alex Goodman KC and **Mr Charles Bishop** (instructed by **Deighton Pierce Glynn**) for the **Second Intervener** by written submissions only
Mr Wayne Beglan and **Mr Jack Barber** (instructed by **Shared Legal Services for Wealden and Rother District Councils**) for the **Third Intervener** by written submissions only

Hearing date: 12 June 2023

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Approved Judgment

This judgment was handed down remotely at 4:10pm on 23 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Keith Lindblom (Senior President of Tribunals), Lord Justice Dingemans and Lady Justice Whipple:

Introduction

1. Did the High Court have jurisdiction to restrain by injunction the Government's proposed development of accommodation for asylum seekers on a former RAF airfield in the district of Braintree, which the local planning authority says would be a breach of planning control? And if the court did have such jurisdiction, could the Government rely on permitted development rights for the proposal, so that it did not have to make an application for planning permission? These are the two main questions in this case.

2. The appeal is against the order of Waksman J., dated 24 April 2023, by which, under CPR rule 3.4, he struck out an application by the appellant, Braintree District Council ("the council"), for an injunction under section 187B of the Town and Country Planning Act 1990 ("the 1990 Act") to restrain the first respondent, the Secretary of State for the Home Department ("the Home Secretary") from an apprehended breach of planning control on land at RAF Wethersfield. The site, which extends to some 322 hectares, is Crown land. It is owned by the second respondent, the Secretary of State for Defence. The apprehended breach of planning control is the proposal by the Home Secretary to use an area of 6.5 hectares within the airfield to provide accommodation for up to 1,700 asylum seekers. The council had issued Part 8 proceedings on 30 March 2023, in which it sought "an injunction to prevent breaches of planning control", and "injunctive relief requiring [the Secretary of State for Defence] not to facilitate any kind of residential occupation of the Land by the placement of asylum seekers". Its application for an injunction under section 187B was issued on the same day. On the following day, 31 March 2023, the Home Secretary applied to strike out the council's application.

3. The judge made his order explicitly on the basis that the council had not received consent from the "appropriate authority" to make the application under section 296A(2) of the 1990 Act.

4. He granted permission to appeal under CPR rule 52.6(1)(b) on the basis that there were compelling reasons for the Court of Appeal to hear the council's appeal. There are three interveners in the appeal, none of whom played any part in the proceedings in the court below. By an order dated 26 May 2023 permission was granted to West Lindsey District Council ("West Lindsey") to intervene by written submissions only. That permission was limited to the legal issues arising in this appeal, which correspond, at least in part, to those in a claim for judicial review challenging the Home Secretary's decision to accommodate asylum seekers at RAF Scampton in West Lindsey's administrative area. By an order dated 1 June 2023 permission to intervene, again by written submissions only, was granted to Mr Gabriel Clarke-Holland, who lives next to the site of the development proposed at RAF Wethersfield and has, on 27 April 2023, issued a claim for judicial review of the Home Secretary's decision to adopt an "Emergency Statement" and to rely on permitted development rights under Class Q, Part 19 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"). And by an order dated 9 June 2023, permission to intervene, once again by written submissions only, was granted to Rother District Council ("Rother"), in whose administrative area there is a site, at Bexhill, which the

Home Secretary is considering as accommodation for asylum seekers. The three sites – RAF Wethersfield, RAF Scampton and the one at Bexhill – are referred to as the "pathfinder" sites.

5. There are now three sets of proceedings in progress relating to RAF Wethersfield: the council's application for a section 187B injunction in this case, Mr Clarke-Holland's claim for judicial review (Claim No.CO/1539/2023), and the council's own claim for judicial review (Claim No. CO/1673/2023). Those two claims for judicial review are due to come before the High Court, together with West Lindsey's claim for judicial review, at an oral permission hearing fixed for 12 and 13 July. An application by West Lindsey for an interim injunction was dismissed by Kerr J. on 11 May 2023.

6. No final decision to use the site at Bexhill has yet been made by the Home Secretary, and there are no extant proceedings relating to that site.

The issues in the appeal

7. Waksman J. identified two "overarching points" in the defence of the Home Secretary and the Secretary of State for Defence to the council's application for an injunction. The first he called the "Jurisdiction Point". This point arose from the Government's contention that the council as local planning authority was not permitted to invoke section 187B to deal with anything done or to be done on Crown land, and that the court therefore had no jurisdiction in these proceedings, which should be struck out (paragraph 5 of the judgment). The second point was the "Class Q Point". This arose from the Government's contention that the proposal was for "permitted development" under Class Q. It was agreed that if this were so planning permission was not required and there could be no breach of planning control, and no grounds for injunctive relief (paragraph 6). The judge determined both issues in the Home Secretary's favour (paragraphs 69 and 91). The basis for his decision to strike out the council's application lay in his reasoning and conclusion on the Jurisdiction Point. His reasoning on the Class Q Point was therefore obiter.

8. From the council's two grounds of appeal and the Home Secretary's respondent's notice three issues arise. First, was the judge wrong to conclude that the High Court has no jurisdiction to address by injunction, or declaration, apprehended breaches of planning control under section 187B of the 1990 Act (the second ground of appeal)? Second, was he wrong to conclude that the development proposed by the Home Secretary at RAF Wethersfield fell within the permitted development rights under Class Q, Part 19 (the first ground of appeal)? A further issue, which arose in the Home Secretary's respondent's notice but in the end was not pursued was this: if, contrary to the judge's conclusions, any element of "planning or administrative judgment" was required in determining whether the development fell within Class Q, should particular weight be given to the views of the Crown?

The essential facts

9. The background facts are not in dispute and are set out in paragraphs 10 to 43 of Waksman J.'s judgment. What follows is a summary largely drawn from those paragraphs.

10. Under section 95 of the Immigration and Asylum Act 1999 ("the 1999 Act") and regulation 5 of the Asylum Seekers (Reception Conditions) Regulations 2005, the Home Secretary has a statutory responsibility to provide accommodation and other support to asylum seekers and their dependants who would otherwise be destitute. Under section 98 of the 1999 Act, when read with regulation 5, if an asylum seeker or their dependant appears to be destitute or likely to be so while their application for support under section 95 is being considered, the Home Secretary must provide them with temporary support which includes accommodation. The statutory definition of "destitute" includes circumstances in which a person does not have adequate accommodation or any means of obtaining it.

11. The asylum system has, for several reasons, been under increasing strain in recent years. Since the COVID pandemic, the number of asylum seekers requiring accommodation has reached unprecedented levels. The time taken by the Home Office to process asylum applications has slowed.

12. In October and November 2022, a "processing facility" at Manston became overcrowded. After the overcrowding at Manston, and in light of the increasing pressure on accommodation, the Home Office started to "spot book" hotels to accommodate the overflow. Spot-bookings can be released without payment if they are not needed. This approach was controversial with the local authorities in whose areas the hotels were being booked, and in some cases they sought injunctions under section 187B to prevent the use of hotels for that purpose. Spot booking was intended as a short-term solution, but the absence of suitable alternative accommodation has led to the continued use of hotels booked in that way. The Home Office had for some time been "block booking" hotel accommodation for use by asylum seekers, which is a different process by which hotel rooms are booked and paid for, usually at preferential rates, whether or not the rooms are in fact used.

13. In March 2023, about 51,000 supported asylum seekers were in temporary accommodation in accordance with the Home Secretary's statutory obligations. Of that total of 51,000, over 48,000 were accommodated in hotels at a cost of £6.2 million a day. The previous accommodated population peak at the end of 2002 was just over 12,000 people.

14. The site at Wethersfield lies about nine miles from Braintree. It is about nine miles from the nearest A class road and is accessed via a network of rural roads, which largely do not have footways. It is 1.7 miles from the village of Wethersfield, and 2.1 miles from the village of Finchingfield.

15. Following earlier investigations to find possible sites for housing asylum seekers, the site at Wethersfield was identified for use in this way in January 2023. On 2 February 2023, the Minister for Immigration approved a recommendation to explore the use of the site, and other Ministry of Defence sites, with an intention to rely on Class Q.

16. On 16 March 2023, Natural England agreed that development of this site did not give rise to any likely significant effects on habitats. On 24 March 2023, the Secretary of State for Levelling Up, Housing and Communities issued a screening direction to the effect that the proposed development of the site was not likely to have significant effects on the environment.

17. On 28 March 2023, the Home Secretary noted an Emergency Statement, prepared by officials, which set out the background leading to the use of the site for accommodating asylum seekers and supported reliance on Class Q. On the same day, she approved the recommendation to proceed with development of the site.

18. On 29 March 2023, the Minister for Immigration told the House of Commons that the site would be used in that way. The council then issued the proceedings which are the subject of this appeal.

19. Since Waksman J. handed down judgment on 21 April 2023, and his order was issued on 24 April 2023, the Home Secretary has undertaken survey work and begun refurbishments to buildings on the site. She is currently working with contractors to meet the requirements for accommodation and ancillary services. At the date of the hearing of this appeal, no asylum seekers had been moved to the site.

Sections 57, 58 and 59 of the 1990 Act

20. Section 57(1) of the 1990 Act provides that "[subject] to the following provisions of this section, planning permission is required for the carrying out of any development of land".

21. Under sections 58 and 59 the Secretary of State may grant planning permission for specific categories of development by a development order. Exercising this power, the Secretary of State has issued the GPDO.

Part VII, "Enforcement"

22. In Part VII of the 1990 Act, "Enforcement", section 171A, under the heading "Expressions used in connection with enforcement", provides in subsection (1) that "[for] the purposes of this Act … (a) carrying out development without the required planning permission … constitutes a breach of planning control". And section 171A(2) provides:

> "(2) For the purposes of this Act –
>
> (a) the issue of an enforcement notice (defined in section 172);
>
> (aa) the issue of an enforcement warning notice (defined in section 173ZA); or

(b) the service of a breach of condition notice (defined in section 187A)

constitutes taking enforcement action."

23. Section 172(1)(a) provides for a local planning authority to issue an enforcement notice where "it appears to them … that there has been a breach of planning control …".

24. Also in Part VII, section 187B, "Injunctions restraining breaches of planning control", which was added to the 1990 Act by section 3 of the Planning and Compensation Act 1991 and came into force on 25 November 1991, provides:

> "(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 that 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."

25. The approach to be taken by the court on an application for an injunction under section 187B was explained by the House of Lords in *South Buckinghamshire District Council v Porter* [2003] 2 A.C. 558. Lord Bingham of Cornhill observed (in paragraph 29 of his speech) that "the power [to grant an injunction] exists above all to permit abuses to be curbed and urgent solutions provided where these are called for". The use of this power to prevent the use of hotels or hostels to accommodate asylum seekers has been considered at first instance in several recent cases, including *Ipswich Borough Council v Fairview Hotels Ltd.* [2022] EWHC 2868 (KB), where an injunction was refused, and *Great Yarmouth Borough Council v Al-Abdin* [2022] EWHC 3476 (KB), where an injunction was granted.

Sections 292A and 293A

26. Normally, the Crown is not bound by statute unless express provision is made in the statute itself, or that is achieved by necessary implication.

27. Following the introduction of Chapter 1 of Part 7 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), Crown land is no longer immune from planning control. In Part XIII of the 1990 Act, "Application of Act to Crown Land", section 292A(1), which was inserted by the 2004 Act, provides that "[this] Act binds the Crown". However, section 292A(2) states that subsection (1) "is subject to express provision made by this Part". Thus, where express provision is made under Part XIII the Crown is not bound by the provisions of the 1990 Act.

28. Section 293A, which was inserted by the Planning and Compensation Act 2004 when Crown immunity was removed, grants to a government department having management of land the power to make an application for planning permission directly to the Secretary of State for Levelling Up, Housing and Communities for "development … of national importance" (subsection (1)(a)), where "it is necessary that the development is carried out as a matter of urgency" (subsection (1)(b)).

29. Part 7 of the 2004 Act repealed the provisions relating to special enforcement notices in sections 294 to 296 of the 1990 Act. Special enforcement notices could only be directed at "development of Crown land carried out otherwise than on behalf of the Crown at a time where no person is entitled to occupy it by virtue of a private interest" (the previous section 294(2), now repealed).

Section 296A

30. Section 296A, which is headed "Enforcement in relation to the Crown", provides:

> "(1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.
>
> (2) A local planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
>
> (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
>
> (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
>
> (5) A step taken for the purposes of enforcement includes –
>
> (a) entering land;
>
> (b) bringing proceedings;
>
> (c) the making of an application.
>
> (6) A step taken for the purposes of enforcement does not include –
>
> (a) service of a notice;
>
> (b) the making of an order (other than by a court)."

31. In this case the "appropriate authority", under section 293(2), is the Ministry of Defence.

32. Section 296A replaced the previous section 296, which provided, in subsection (2):

> "(2) …
>
> Except with the consent of the appropriate authority –
>
> (aa) in relation to land which for the time being is Crown land –
>
> (i) a planning obligation shall not be enforced by injunction; and
>
> (ii) the power to enter land conferred by section 106(6) shall not be exercised;
>
> (a) no order or notice shall be made, issued or served under any of the provisions of section 102, 103, 171C, 172, 173A, 183, 187A, 187B, 198, 199 or 215 or Schedule 9 or under any of those provisions as applied by any order or regulation made under Part VIII, in relation to land which for the time being is Crown land;
>
> (b) no interest in land which for the time being is Crown land shall be acquired compulsorily under Part IX."

The judge's reasoning and conclusions on the Jurisdiction Point

33. On the Jurisdiction Point, the judge said that "[the] short point for determination is whether an application for an injunction under section 187B of the Act is caught by section 296A". He acknowledged that there is "no authority directly on the point" (paragraph 51). He considered the legislative history behind section 296A, including its replacement of the previous section 296 (paragraphs 52 and 53). That provision had been added to the 1990 Act at the same time as section 187B, making "an immediate carve-out … so far as Crown land was concerned". The issue of an enforcement notice under section 172 had also been excluded (paragraph 54). Comparing the previous section 296 with the current section 296A, the judge noted that a local planning authority's ability to issue an enforcement notice is now expressly included, as is an order made by it, under section 296A(6). He also noted that the treatment of what is and is not permitted is not now done by referring to specific sections of the 1990 Act, but "by reference to a characterisation of what is being done under the generic label of a "step for the purposes of enforcement in relation to Crown land" without the consent of the [appropriate] authority" (paragraph 55).

34. Turning to the language of section 296A itself, the judge focused on subsections (4), (5) and (6) (paragraph 56). He did not accept that the words "required or prohibited" in subsection (4) should be read restrictively, as the council had argued, to cover only those cases where there was, for example, a "pre-existing enforcement notice", or that they could not have a wider meaning to encompass what the 1990 Act "says cannot be done", for example in section 57 and in section 171A (paragraph 57). Subsection (4), he said, speaks "not only of that which is required to be done or prohibited under the Act but that which is required to be done or prohibited by the Act, so it is not limited to that which is required by a notice served under or pursuant to … the Act itself" (his emphasis). Section 57 "imposes a direct requirement". So it was "difficult to see why a section 187B injunction application is not "something done in connection with the section 57 requirement to obtain planning permission". The whole basis of the council's

claim was to seek an order preventing or reversing development where the requirement for planning permission has not been satisfied (paragraph 58). The "requirement" in section 57 is "at a high level", but this did not necessarily exclude it from section 296A (paragraph 59). Although the term "enforcement action" is used in section 171A(2), it is not in section 296A; and both an enforcement notice and an injunction rely on a breach of planning control (paragraph 61).

35. The judge continued (in paragraph 63):

> "63. … Looking at section 296A as a whole, it seems to me that the true divide is between action taken by the [local planning authority], which is permitted, and action by the court, which is not, insofar as in the context of enforcement. Added to this divide is entry on land which is treated the same way as action by the court. …"

36. The proceedings did "not even need to be in connection with enforcement of anything required or prohibited, to be caught by the prohibition in subsection (5)" (paragraph 65).

37. The judge went on to say that the scheme of section 296A, unlike the previous section 296, was not to exclude steps that could otherwise be taken against Crown land "by reference to particular provisions", but "by reference to generic descriptions like the bringing of proceedings, entry upon land etc." (paragraph 67). Section 187B had been specifically excluded by section 296, together with enforcement notices under section 172. But while enforcement notices are specifically brought back in by section 296A, injunctions are not, and "the language, in any event, favours the exclusion of all court proceedings and applications …" (paragraph 68).

38. It followed that the judge was "of the clear view that any proceedings or applications founded upon section 187B brought or made against the Crown are prohibited by section 296A". He therefore decided the Jurisdiction Point in favour of the Government (paragraph 69).

Does the High Court have jurisdiction to restrain this apprehended breach of planning control by a section 187B injunction?

39. For the council, Mr Wayne Beglan repeated the argument rejected in the court below. He argued that Waksman J. misconstrued section 296A and was wrong in law to conclude that, in the circumstances of this case, the High Court has no jurisdiction to grant an injunction under section 187B.

40. Mr Beglan submitted that the judge's interpretation of section 296A was mistaken because it wrongly treated the council's application under section 187B as a "step taken for the purposes of enforcement". A section 187B injunction for an apprehended breach of planning control is not itself such a step. In treating the general requirement for planning permission in Part III of the 1990 Act as something "required" for the purposes of the enforcement provisions in Part VII, the judge misunderstood the scope of section 296A. There is in those provisions an implicit distinction between "high-level"

requirements, such as the general requirement not to develop without planning permission, and particular requirements such as the mandatory steps in an enforcement notice. Only the latter are caught by section 296A(4). Injunctions targeting breaches of the high-level requirement not to develop without planning permission, as in this case, are not precluded by subsection (4) and are therefore within the jurisdiction of the court. For essentially the same reason, Mr Beglan submitted, the judge fell into error in concluding that any breach of planning control was something "prohibited" within the meaning of that word in section 296A.

41. Mr Beglan contended that the judge's construction of these provisions gave insufficient weight to the presumed intention of Parliament in enacting section 296A. Parliament had chosen to remove the express prohibition in section 296 on local planning authorities applying for injunctions under section 187B. The judge failed to understand the legislative purpose underlying that change. If the interpretation he adopted were right it would have surprising implications. The question of whether or not the High Court had jurisdiction to grant an injunction would depend on the consent of the "appropriate authority". The "appropriate authority" would be the "gatekeeper" of the court's "original jurisdiction" to grant injunctive relief. The court would lack the power even to make a non-binding, declaratory injunction.

42. On behalf of the Secretary of State, Mr Paul Brown K.C. submitted that the judge's conclusion on this issue was right for the reasons he gave. His interpretation of section 296A was accurate. The concept of a "step taken for the purposes of enforcement" is wide and clearly embraces section 187B injunctions. The council was wrong to suggest that such an injunction is not applied for principally for the purposes of enforcement. It is a step taken to enforce a breach of something "required to be done" under the first limb of subsection (4), because its purpose is to regularise a breach of the requirement to obtain planning permission before carrying out development. The legislature's replacement of the complete immunity for the Crown under section 296 with the partial immunity under section 296A reflected its intention to give local planning authorities the power to issue an enforcement notice for development on Crown land. It left in place the prohibition on section 187B injunctions. Two separate categories were created: action that may not be taken, in section 296A(5), and action that may, in section 296(A)(6). That the clear prohibition on commencing proceedings should depend on the consent of the appropriate authority is unsurprising, its purpose being to prevent local planning authorities from impeding development by the Crown on Crown land.

43. In his written submissions for Mr Clarke-Holland, Mr Alex Goodman K.C. contended that the judge was right on the jurisdiction issue. The general position, which the legislation reflects, is that the court has no jurisdiction to issue binding injunctions against the Crown. Even though section 296A(1) prevents the Crown's non-compliance with an enforcement notice from being an offence, the Secretary of State may still be expected to comply with an enforcement notice. In this case the council should have issued an enforcement notice, or brought a claim for judicial review, and not applied for an injunction that section 296A clearly prevents the court from granting.

44. Neither West Lindsey nor Rother made submissions on the Jurisdiction Point.

45. Having considered all the submissions made to us, both written and oral, on the issue of jurisdiction, we find it impossible to accept the argument advanced on behalf of the council. We think Mr Brown's submissions are correct. It seems to us clear that the

judge was right to conclude as he did on this issue, and that his essential reasons for doing so are sound and complete. Our own reasoning can therefore be stated succinctly.

46. One starts from the agreed and obvious position that the issuing of the council's Part 8 claim constituted its "bringing proceedings", which is the concept in paragraph (b) of section 296A(5), and that its application for an injunction was "the making of an application", which is the concept in paragraph (c). The application was made under section 187B, which grants the local planning authority the power to "apply to the court for an injunction". It is also a matter of fact that the site of the proposed development is Crown land, and that consent for the bringing of the proceedings and the making of the application has not been given by the Secretary of State for Defence as the "appropriate authority", which is necessary under subsection (2) if a local planning authority is to take "any step for the purposes of enforcement". None of that is controversial. The basic dispute here is whether the "bringing proceedings" and "the making of an application" were, respectively, within section 296A(5), because they were, in either case, "[a] step taken for the purposes of enforcement" as defined in section 296A(4).

47. As the parties agree, the decisive question is therefore one of statutory interpretation directed at that expression in section 296A(4). The principles on which that exercise is conducted are well established and clear. And as this court has recently emphasised, they are no different, and no differently applied, when the legislation being construed is in the sphere of land use planning (see the judgment of the court in *Tidal Lagoon (Swansea Bay Plc) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWCA Civ 1579, at paragraphs 30 and 31). The court's function is to ascertain the meaning of the statutory words, having regard to the purpose of the provisions in question. It must interpret the language of the statute, so far as it can, in a way that best gives effect to that purpose. To establish what Parliament intended, it must have in mind the relevant context (see the judgment of Lord Hodge in *Project Blue Ltd. v Commissioners for Her Majesty's Revenue and Customs* [2018] UKSC 30, [2018] 1 W.L.R. 3169, at paragraph 110).

48. Applying those principles in a conventional way, we do not think the interpretation of the relevant statutory provisions bearing on the court's jurisdiction in the circumstances of this case, in particular the provisions of sections 296A and 187B of the 1990 Act, is unduly complicated or difficult. On the contrary, it is reasonably straightforward.

49. Section 296A(2) is in imperative terms and broad in scope. A local planning authority "must not" take "any step" for the purposes of enforcement "in relation to" Crown land unless it has the consent of the appropriate authority (our emphasis). The definition of a "step taken for the purposes of enforcement" is in section 296A(4). It is a deliberately wide definition. It extends to "anything done in connection with the enforcement" of "anything required to be done or prohibited by or under this Act" (our emphasis again). It is amplified in the inclusive provision in section 296A(5), which confirms that a relevant step includes "(a) entering land", "(b) bringing proceedings" and "(c) the making of an application". And it is limited by the exclusive provision in section 296A(6), which excludes "(a) service of a notice" and "(b) the making of an order (other than by a court)".

50. We add that the concept of a "step taken for the purposes of enforcement" in section 296A(4) is not the same as the concept of "taking enforcement action" in section

171A(2), which is defined in specific terms as being "(a) the issue of an enforcement notice", as defined in section 172, or "(aa) the issue of an enforcement warning notice", as defined in section 173ZA, or "(b) the service of a breach of condition notice", as defined in section 187A. The difference in the language used in these two provisions is, it seems, deliberate, and also reflects an obvious difference in scope.

51. In our view an application for an injunction under section 187B is undoubtedly a "step taken for the purposes of enforcement". Section 187B is one of a series of provisions comprised in Part VII of the 1990 Act, whose collective description, in the heading of that Part, is "Enforcement". It is manifestly an enforcement provision. Its explicit purpose is to enable the local planning authority to restrain, by means of an injunction granted by the court, any "actual or apprehended breach of planning control", regardless of whether it has exercised or proposes to exercise any of its other powers under Part VII. If an authority applies to the court for such an injunction, as the council has done here, it is in our view clearly taking a "step for the purposes of enforcement" within the definition in section 296A(4). It is doing so because that step qualifies within the relevant definition as "anything done in connection with the enforcement of anything required to be done … by or under [the 1990 Act]". As Mr Brown submitted, the requirement is inherent in the provision in section 57(1) that planning permission is "required" for the carrying out of any development on land and in the corresponding provision in section 171A(1) that the carrying out of development without the "required planning permission" constitutes a "breach of planning control". Under section 171, a "breach of planning control" is one of the "[expressions] used in connection with enforcement". So, in our view, the council's application for an injunction under section 187B is a step for the purposes of enforcing a requirement within the scope of section 296A(4), and is thus subject to the prohibition in section 296A(2). The same may also be said of the Part 8 claim itself.

52. That simple analysis, we think, corresponds to the reality of these proceedings. The council's Part 8 claim and its application for an injunction are motivated by its belief that, if the proposed development is to proceed, an application ought to be made and granted for the required planning permission in accordance with section 57(1), and that until the required planning permission has been obtained the development will be unlawful. This is apparent in the council's letters dated 15 and 16 March 2023 to officials at the Home Office, and in the corresponding assertions in its claim form, in particular at paragraphs 5, 6, 10, 26 and 35 of its "Brief Details of Claim", and in the evidence of its Head of Planning and Economic Growth, Ms Emma Goodings, in her first witness statement, dated 29 March 2023, in particular at paragraphs 2 and 22.

53. An alternative or additional conclusion, which also seems to us to be correct, is that the application for an injunction under section 187B also constitutes a step qualifying as "anything done in connection with the enforcement of anything … prohibited by or under [the 1990 Act]". The apprehended breach of planning control, as alleged, which is the carrying out of the proposed development without the required planning permission, would be unlawful and susceptible of enforcement, and in that sense "prohibited" under the 1990 Act. On this basis too both the application for an injunction under section 187B and the Part 8 proceedings fall within the reach of section 296A(4) and are therefore subject to the prohibition in section 296A(2).

54. None of the arguments to the contrary skilfully presented by Mr Beglan seems to us to have any real merit. Each of them either requires additional words to be read into the

statutory provisions or a meaning given to those provisions that they cannot sustain. They do not propose a tenable interpretation of section 296A.

55. In particular, we reject the council's argument that the expression "the enforcement of anything required to be done or prohibited by or under this Act" can properly be construed as including only acts required or prohibited by a notice or order that has already been issued. The difficulty with this construction is that the statutory language, on its ordinary meaning, is manifestly wider than that. The subject of the provision is "anything", which embodies its wide reach, qualified only as anything required or prohibited "by or under this Act". That formulation points away from the idea that the legislature sought to limit "anything" to a particular kind of requirement or prohibition. Rather, the relevant requirements and prohibitions are envisaged in generous terms. Section 296A(4) extends to any relevant requirement or prohibition arising from the provisions of the 1990 Act itself, and to any relevant requirement or prohibition attributable to its legal effects. To construe this provision as confined to requirements and prohibitions arising in notices or orders would require the court to read into it additional words that Parliament did not include.

56. We therefore conclude that on this first issue in the council's appeal its argument must be rejected. Section 296A presents a statutory bar to the Part 8 claim and to the application for an injunction under section 187B. The court does not have jurisdiction to entertain those proceedings. The judge was right to conclude that the application must be struck out.

57. It follows that the appeal must be dismissed.

No conclusion on the Class Q Point

58. Our conclusion on the issue of jurisdiction means that the second issue of whether this proposed admitted change of use fell within Class Q does not need to be determined.

59. Class Q provides:

> "Q. Permitted development
>
> Development by or on behalf of the Crown on Crown land for the purposes of –
>
> (a) preventing an emergency;
>
> (b) reducing, controlling or mitigating the effects of an emergency; or
>
> (c) taking other action in connection with an emergency."

60. Several conditions apply to Class Q. These include the requirement to notify the local planning authority as soon as practicable, and to cease the use before the expiry of the 12 months beginning with the date on which the development began.

61. There is an interpretation provision for Class Q, which states:

"(1) For the purposes of Class Q, "emergency" means an event or situation which threatens serious damage to –

(a) human welfare in a place in the United Kingdom;

(b) the environment of a place in the United Kingdom; or

(c) the security of the United Kingdom.

(2) For the purposes of sub-paragraph (1)(a), an event or situation threatens damage to human welfare only if it involves, causes or may cause –

(a) loss of human life;

(b) human illness or injury;

(c) homelessness;

(d) damage to property;

(e) disruption of a supply of money, food, water, energy or fuel;

(f) disruption of a system of communication;

(g) disruption of facilities for transport; or

(h) disruption of services relating to health.

…"

62. Rival submissions were made on the effect of Class Q and the approach taken by Waksman J. to the Class Q Point. It was submitted on behalf of the Home Secretary that the approach of Waksman J. was correct. It was submitted on behalf of the council that the judge's approach to the issue was wrong, and that he had erred as to the correct construction of Class Q.

63. There were also written submissions from the interveners. West Lindsey adopted the submissions made on behalf of the council and Mr Clarke-Holland on the substantive approach to Class Q. West Lindsey also made reference to a speech in the House of Commons by the Minister for Immigration. This prompted a response from the Speaker's Counsel about the scope of article 9 of the Bill of Rights 1688 and whether proceedings in Parliament were being questioned. It was submitted on behalf of Mr Clarke-Holland that this court should not determine the Class Q Point, in part because there will be different evidence in other proceedings below. It was also submitted that if the issue was to be addressed by this court, the approach taken by Waksman J. was incorrect. Rother adopted the submissions of the council.

64. In our judgment it is neither necessary nor desirable to determine the Class Q Point on this appeal. It is not necessary because our decision on the Jurisdiction Point is determinative of the appeal. It is not desirable because anything that we say on this

matter would necessarily be obiter dicta, and would not bind the courts below. Worse, anything that we say might put the judge in another case in which the Class Q Point arises at first instance in a difficult position. At the moment that other judge will have the benefit of the approach to Class Q set out by Waksman J.. That approach would not bind the other judge, both because Waksman J.'s findings on Class Q were obiter, and because the other judge would be of coordinate jurisdiction. The other judge would of course be expected to follow Waksman J.'s approach unless that judge considered it to be wrong. If we agreed with Waksman J.'s approach, that might, in practice, make it more difficult for the other judge to take their own approach to Class Q. If, on the other hand, we disagreed with Waksman J.'s approach but the judge considered that approach was correct, it might again create unnecessary difficulty – because the judge might be concerned about ignoring what we had said on the point, even though it would only be obiter.

65. For these reasons we have not addressed the Class Q Point. This means that it is also unnecessary to address the issue in the respondent's notice, or the point which led to the intervention of the Speaker's Counsel.

Conclusion

66. For the reasons we have given, this appeal is dismissed.