Neutral Citation Number: **[2025] EWHC 2183 (KB)**

Case No: KB-2025-002908

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19th August 2025

Before:

MR JUSTICE EYRE

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Between :

EPPING FOREST DISTRICT COUNCIL	**Claimant**
- and -	
SOMANI HOTELS LIMITED	**Defendant**

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- -

Philip Coppel KC and **Natasha Peter** (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Piers Riley-Smith (instructed by **Richard Buxton & Co**) for the **Defendant**

Hearing date: 15th August 2025

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Approved Judgment

This judgment was handed down remotely at 4:00pm [19th August] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Eyre :

Introduction.

1. The Claimant is the local planning authority for the district of Epping. The Defendant is the owner of the Bell Hotel, High Road, Epping ("the Bell"). Since early April 2025 the Bell has been used to accommodate asylum seekers pursuant to a contract between the Defendant and CTM (North) Ltd ("CTM"). The asylum seekers are being accommodated pursuant to the duties imposed on the Home Secretary under the Immigration and Asylum Act 1999.

2. The Claimant and the Defendant are agreed that the lawful planning use of the Bell is as a hotel within Class C1 of the Town and Country Planning (Use Classes) Order 1987 ("the UCO"). The Claimant says that the use of the Bell to accommodate asylum seekers in the way in which that is being done is a material change of use for which the Defendant should have but has not obtained planning permission with the consequence that its use in this way is unlawful. The Claimant says that the current use is a *sui generis* use as being accommodation for the Home Office placement of asylum seekers, alternatively that it is use as a hostel. The Claimant seeks an injunction pursuant to section 187B of the Town and Country Planning Act 1990 ("the TCPA") to restrain the current use of the Bell. It also seeks an interim injunction to the same effect to operate until the final trial of the injunction claim. The application before me is that application for an interim injunction. The Claimant says that the balance of convenience falls heavily in favour of granting that interim injunction.

3. The Defendant does not accept that the use of the Bell to accommodate asylum seekers amounts to a change of use and still less to a material change of use for the purposes of the planning legislation. Accordingly, it denies that there has been any breach of planning control or any unlawfulness. It accepts that the Claimant has shown a serious issue to be tried as to whether there has been a material change of use. However, it says that the balance of convenience falls heavily against the grant of an interim injunction and contends that the current application should be dismissed.

4. For the Defendant Mr Riley-Smith criticized the Claimant's failure to join CTM as a further defendant. He submitted that the appropriate course would have been to join CTM in addition to his client. He said that the failure to do this meant that the court did not have all the information it needed to make a proper decision. I do not accept that this criticism is well-founded. It is right to note that in a number of cases with circumstances similar to this those in the position of CTM have been joined as defendants but that is not necessary. The Claimant is seeking relief in respect of an alleged breach of planning control at the Bell. The Defendant is the landowner but it is also apparent that the Defendant's staff remain engaged in the operation of the Bell. Indeed, an aspect of the Defendant's argument that there has not been a material change of use is to point to the continued provision of reception, cleaning, and catering services by its staff. The Claimant is entitled to decide those against whom it seeks relief and was not required to join CTM. It was open to the Defendant to obtain evidence from CTM or the Home Office and the Defendant's evidence includes detailed information given by CTM.

5. It will be apparent from the preceding summary that the outcome of this application turns on technical issues about the rules of Planning law and on the application of the

established principles governing the circumstances in which a court should grant or refuse interim relief. It will be seen from the analysis I set out below that the application of those rules and principles to particular circumstances is acutely fact sensitive. The core principles were not substantially in dispute between the Claimant and the Defendant: their dispute relates to the application of those principles to the particular facts here and it is that narrow dispute to which this judgment is addressed.

The Factual Background in Summary.

6. Epping is a market town with a population of approximately 11,000. The Bell stands on a site of 1.5ha. It is on the western outskirts of Epping opposite the open land of Bell Common. In the submissions before me there was some difference of emphasis as to the appropriate way to describe the Bell's location in relation to the town of Epping but these were matters of degree. I approach matters on the footing that the Bell is on the outer edge of the built-up part of Epping but because of the relatively small size of Epping it is within a short walking distance of the facilities and institutions including schools in that town.

7. Although the site of the Bell had been used as a hotel for some time before then the current principal building was constructed in 1900 and there were additions in the 1960's. It has 80 bedrooms. The sign outside describes it as having a "restaurant & bar, banqueting suite & conference rooms." Before the Covid-19 pandemic and the measures put in place to address it those facilities had been available for use by local people and others. However, that use had been declining in part because of the Bell's location on the outskirts of the town. That decline is confirmed by the planning history which shows that in 2006 the owners sought planning permission for a partial demolition and for the use of the remaining part of the site as a care home. That application was initially refused but permission was subsequently granted although the change was not implemented.

8. Since 2020 the Bell has been used as follows:

   i) The Bell closed in March 2020 following the outcome of the Covid-19 pandemic.

   ii) From May 2020 to March 2021 the Bell was used to accommodate homeless persons including asylum seekers.

   iii) The Bell reopened in August 2022 following the lifting of the lockdown restrictions. However, occupancy and use was very greatly reduced. The reality is that since the onset of Covid-19 pandemic any use of the Bell as a hotel by members of the general public has been minimal.

   iv) From October 2022 to April 2024 the Bell was used to accommodate asylum seekers and for at least a substantial part of that period those were predominantly single adult male asylum seekers. That period passed without incident.

   v) From April 2024 to April 2025 the Bell remained closed.

   vi) The current use began in April 2025.

9. In July 2020 John Ayers, a planning enforcement officer of the Claimant, contacted the Defendant. Mr Ayers told the Defendant that the Claimant believed that the use of the Bell to accommodate asylum seekers was a change of use. The Defendant responded saying that it did not accept that there had been a change of use but adding that the Defendant did not intend to accommodate asylum seekers after the passing of the Covid-19 crisis.

10. The Claimant's planning enforcement staff contacted the Defendant again in November 2022 following the start of the exercise of accommodating asylum seekers from October 2022 onwards. As a result of those exchanges the Defendant applied in February 2023 for approval for a temporary change of use. It is to be noted that the application was expressly made on the footing that it was without prejudice to the Defendant's contention that there had not been a change of use. That application had not been determined by March 2024 and it was then withdrawn by the Defendant in light of the imminent ending of the contract for the accommodation of asylum seekers.

11. In the run up to start of the contract with CTM there were discussions and exchanges of correspondence between the Home Office, CTM, and the Claimant. The Claimant raised a number of concerns about the use of the Bell to house asylum seekers and said that it would not support that use. The Claimant did not at that stage raise the argument that such use would be a breach of planning control. It was as a result of those discussions that the Home Office and CTM agreed that no more than 138 asylum seekers should be accommodated at the Bell.

12. It was on 8th April 2025 that the Claimant's planning enforcement team contacted the Defendant. On that day James Stubbs, the Claimant's Planning Enforcement and Compliance Manager, told the Defendant's solicitors that it was the Claimant's view that it would be necessary for the Defendant to seek permission for a change of use. Initially, the Defendant said that such an application would be made. However, on 15th June 2025 the Defendant told the Claimant that it had decided not to proceed with an application for permission for change of use. This was said to be because of advice from the Home Office that it regarded the use as being a hotel and that it did not support the Defendant making an application for permission for change of use.

13. The current arrangement between the Defendant and CTM is for the Bell to accommodate up to 138 asylum seekers. It follows that most but not all of the 80 bedrooms are in double occupancy. Reception, catering, cleaning and related services are provided by the Defendant. In addition a welfare officer and a number of security staff are stationed at the Bell. The security staff are contracted provided by CTM and there is a security presence at all times. Those accommodated in the Bell have no choice of room nor of the person with whom they are to share. The contract between CTM and the Defendant requires the latter to follow the instructions of "CTM, the Home Office or the Local Authority" in deciding who is to be placed in which room. Those accommodated are not allowed to request an upgrade of room even if they offer to pay for this. None of those accommodated in the Bell pay the Defendant but instead payment is made through the contract with CTM. Those resident at the Bell are free to come and go but any of them who wishes to be away for more than one day must obtain authorisation from the Home Office. The Defendant is required to obtain a signature from each resident each day and to notify CTM and the Home Office if any resident is not seen for more than one day. There have been no changes to the internal structure of

the Bell and the only external change is the erection of fencing which was a response to the unlawful activity to which I will refer below.

14. Dave Salmon is the Defendant's Group Operations Director. He emphasizes that the Defendant takes very seriously its responsibility for the safety residents, staff, and the local community. He points out that the previous periods when the Bell was used to accommodate asylum seekers passed without incident or concern. He attributes the current difficulties to those conducting violent and disorderly protests and to the measures needed to address those.

15. Mr Salmon says that the Bell had been in decline for a number of years and "is no longer the community hub for social gatherings and weddings" that it had been 15 – 20 years ago. Mr Salmon attributes this to the location of the Bell. The Bell was loss-making in the period from 2017 – 2020 and its future as a hotel was at risk. Substantial investment will be needed if it is return to commercial hotel operation. Mr Salmon says that the contract with CTM provides a steady income without which the financial stability of the business would be at risk.

16. The Claimant relies on the evidence of four council officers and one local councillor.

17. In his statement Mr Stubbs sets out the planning history; the history of the dealings between the Defendant and the Claimant's planning officers; and the Claimant's view of the planning issues. Mr Stubbs sets out the location of the Bell in relation to schools and other local facilities. In addition, he explains the matters which caused the Claimant to conclude that there had been a material change of use. He says that there has been harm to the amenity of the local area "from the nature of the use [of the Bell] and associated, sustained protests and disturbance, heightening the risk and fear of crime, and resulting in occupants of the Land being socially excluded from the community." Mr Stubbs that there is in addition "significant detriment to the amenities of nearby residential properties … by means of noise disturbance."

18. Barbara Beardwell is the Claimant's Monitoring Officer and Strategic Legal Adviser. Her evidence sets out details of the motion passed by the Claimant in relation to the use of the Bell and a transcript of a council meeting at which sundry concerns were expressed.

19. Mandy Thompson is the Claimant's Service Director for Regulatory Services. Miss Thompson sets out details of the dealings between the Claimant and CTM and the Home Office in the run up to the current use of the Bell.

20. Miss Thompson and Paula Maginnis, the Claimant's Service Director for Corporate Services give evidence of instances of those accommodated at the Bell being arrested. It is to be noted that those witnesses' knowledge of those matters derives solely from press reports apparently based on press releases by the police. They refer to three such arrests:

    i) On 5th April 2025 a resident was arrested for an alleged offence of arson said to have committed at the Bell.

ii) On 8th July 2025 a resident was arrested in respect of an incident alleged to have taken place in a restaurant approximately 0.7 miles from the Bell. The arrest was for an alleged sexual assault and related matters.

iii) On 12th August 2025 a resident was arrested for alleged offences of common assault, battery, and sexual assault.

21. Miss Thompson sets out the history of protest activity in respect of the use of the Bell. This activity began when the arrest on 8th July 2025 became known. It was initially limited to local residents and was lawful and peaceful. However, the protest activity increased in scale and came to involve persons who had travelled to Epping from elsewhere either to express opposition to the use of the Bell to accommodate asylum seekers or to express support for those accommodated there. The protests came to include incidents of violence and disorder. A number of measures were taken by the police to address that offending. Orders have been made under the Public Order Act 1986 restricting public assembly in the vicinity of the Bell and placing a time limit on protest activity. In addition the police have made dispersal orders and taken related measures.

22. Miss Thompson and Holly Whitbread, the district councillor for the ward containing the Bell, give evidence of their understanding of the effect on local residents of these matters. They refer to disruption to the life of the local community with concerns about public safety; about community cohesion; and about the pressure on local services. The last element was not pressed in submissions before me and I say immediately that it is not factor of significance for current purposes. Cllr Whitbread says that the presence of all male accommodation close to schools, homes, and other facilities of the town has caused a fear of offending from those at the Bell. She says that this fear has been particularly expressed to her by women and by parents and has been magnified by knowledge of the arrests of those accommodated at the Bell. Cllr Whitbread emphasizes that although she believes many local residents oppose the current use of the Bell they also have no truck with those from outside the local community who have attended to engage in acts of violence. The thrust of Cllr Whitbread's evidence can be seen from paragraph 10 of her statement where she says:

> "Based on my liaising with my constituents, residents have become increasingly fearful. Businesses on the high street tell me that they are suffering from reduced footfall. I have seen for myself a disruption to daily life, with road closures, noise and a persistent atmosphere of tension. The feedback I am receiving from my constituents is that the protests are making residents feel unsafe and are damaging the local economy."

The Relevant Legal Framework.

23. By section 57(1) of the TCPA planning permission is required for the development of land. By virtue of section 55(1) "development" for these purposes includes the making of a material change in the use of any buildings or land.

24. The circumstances in which a change of use will and will not amount to development were explained thus by Holgate J (as he then was) in *Ipswich BC v Fairview Hotels (Ipswich) Ltd* [2022] EWHC 2868 (KB) at [69] – [71]:

> [69] "The making of a change of use of itself does not amount to development. That depends upon whether the change is "material" in terms of planning considerations. Planning considerations are to do with the character of the use of land. The policies of the

> development plan may be relevant to that issue (*Wilson v West Sussex County Council* [1963] 2QB 764 at 785; *R (Wright) v Resilient Energy Severndale Limited* [2019] 1 WLR 6562 at [36]). The issue of whether a material change of use takes place is one of fact and degree. But what has to be considered is the character of the use of the land, not the particular purpose of a particular occupier (*Westminster City Council v Great Portland Estates plc [*1995] AC 661 at 669G). In this context, it is relevant to consider not only the on-site but also the off-site effects of the character of the use of the land (see e.g. *Hertfordshire County Council v Secretary of State for Communities and Local Government* [2013] JPL 560; *Westminster City Council v Secretary of State for Communities and Local Government* [2015] JPL 1256).
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> [70] The UCO has been made pursuant to s. 55(2)(f) of the TCPA 1990 to exclude from the definition of development, and hence the requirement to obtain planning permission, changes between a use for one purpose and the use for any other purpose within the same Use Class (see also Article 3(1) of the UCO). Thus, Class C1 comprises "use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided". Until 1994 use as a hostel was also included in the same use class. A hostel is now a sui generis use outside any Use Class (Article 3(6)(i) of the UCO).
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> [71] However, it is important to bear in mind that the UCO simply defines certain changes of use so that they are not to be treated as development. The Order does not operate so as to treat a change from a use within a Use Class to another use outside that Class as a material change of use (*Rann v Secretary of State for the Environment* (1979) 40 P&RC 113). So where the use of land changes from a hotel to a hostel, the only effect of the UCO is that that change is not excluded from development control. The UCO cannot be used to treat that change as representing in itself a material change in the use of the land. Whether that is so will depend on a case-specific assessment of the effect of the change on the character of the use of the land, in other words, the planning consequences of the change."

25. It follows that whether the current use of the Bell as accommodation for asylum seekers is lawful depends on the answers to two questions. First, whether such use is a change from the permitted use as a hotel. Second, whether, if there is such a change, it is a change which is material in terms of planning considerations.

26. To return to the provisions of the TCPA. If there has been a breach of planning control the paradigm or normal method for a local planning authority to take action is by service of an enforcement notice under section 172. Such a notice must be served not less than 28 days before the date when it is to take effect (section 172(3)(b)). The effect of a notice in the circumstances of this case would be to require the Defendant to cease use of the Bell as accommodation for asylum seekers. Section 174 gives a person on whom an enforcement notice is served a right to appeal to the Secretary of State and such an appeal will normally be determined by an inspector. When an appeal is made the enforcement notice is of no effect until the appeal is either determined or withdrawn (section 175(4).

27. Section 183 empowers a local planning authority to serve a stop notice which requires a relevant activity to cease before the period for compliance with an enforcement notice has expired. However, section 183(5) provides that:

> "A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the service of the notice; and for the purposes of this subsection no account is to be taken of any period during which the activity was authorised by planning permission."

28. The Claimant's application is for an injunction pursuant to section 187B(1) and (2) which provide, thus, for an injunction restraining an actual or apprehended breach of planning control:

> "(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
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> (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."

29. Section 191 of the TCPA enables a person to apply for a certificate that the existing use of land is lawful and section 192 makes similar provision for an application in respect of prospective use.

30. The approach to be taken by the court to an application under section 187B was explained by the House of Lords in *South Bucks DC v Porter* [2003] UKHL 26, [2003] 2 AC 558.

31. The principles expressed by Simon Brown LJ in the Court of Appeal were set out in Lord Bingham's judgment and were endorsed as "judicious and accurate in all essential respects". For current purposes the following are relevant:

> "[38] it seems to me perfectly clear that the judge on a section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of these matters is, as Burton J suggested was the case in the pre-1998 Act era, 'entirely foreclosed' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise...
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> [39] Relevant too will be the local authority's decision under section 178B(I) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.
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> [40] Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing

it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case."

32. At [27] – [29] Lord Bingham further explained the basis of the section 187B jurisdiction and the approach to be taken saying:

> [27] "The jurisdiction of the court under section 187B is an original, not a supervisory, jurisdiction. The supervisory jurisdiction of the court is invoked when a party asks it to review an exercise of public power. A local planning authority seeking an injunction to restrain an actual or apprehended breach of planning control does nothing of the kind. Like other applicants for injunctive relief it asks the court to exercise its power to grant such relief. It is of course open to the defendant, in resisting the grant of an injunction, to seek to impugn the local authority's decision to apply for an injunction on any of the conventional grounds which may be relied on to found an application for judicial review. As Carnwath J observed in *R v Basildon District Council, Ex p Clarke* [1996] JPL 866, 869: "If something had gone seriously wrong with the procedure, whether in the initiation of the injunction proceedings or in any other way, it was difficult to see why the County Court judge could not properly take it into account in the exercise of his discretion to grant or refuse the injunction." But a defendant seeking to resist the grant of an injunction is not restricted to reliance on grounds which would found an application for judicial review.
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> [28] The court's power to grant an injunction under section 187B is a discretionary power. The permissive "may" in subsection (2) applies not only to the terms of any injunction the court may grant but also to the decision whether it should grant any injunction. It is indeed inherent in the concept of an injunction in English law that it is a remedy that the court may but need not grant, depending on its judgment of all the circumstances. Underpinning the court's jurisdiction to grant an injunction is section 37(1) of the Supreme Court Act 1981, conferring power to do so "in all cases in which it appears to the court to be just and convenient to do so". Thus the court is not obliged to grant an injunction because a local authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction and so makes application to the court. No assistance is gained from *R v Wicks* [1998] AC 92, relied on by the local authorities, where it was held to be too late to challenge an enforcement notice in criminal proceedings, a situation quite unlike the present.
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> [29] The court's discretion to grant or withhold relief is not however unfettered (and by quoting the word "absolute" from the 1991 circular in paragraph 41 of his judgment Simon Brown LJ cannot have intended to suggest that it was). The discretion of the court under section 187B, like every other judicial discretion, must be exercised judicially. That means, in this context, that the power must be exercised with due regard to the purpose for which the power was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. Since the facts of different cases are infinitely various, no single test can be prescribed to distinguish cases in which the court's discretion should be exercised in favour of granting an injunction from those in which it should not. Where it appears that a breach or apprehended breach will continue or occur unless and until effectively restrained by the law and that nothing short of an injunction will provide effective restraint (*City of London Corporation v Bovis Construction Ltd* [1992] 3 All ER 697, 714), that will point strongly towards the grant of an injunction. So will a history of unsuccessful enforcement and persistent non-compliance, as will evidence that the defendant has played the system by wilfully exploiting every opportunity for prevarication and delay, although section 187B(1) makes plain that a local planning authority, in applying for an injunction, need not have exercised nor propose to exercise any of its other enforcement powers under Part VII of the Act. In cases such as these the task of the court may be relatively straightforward. But in all cases the court must decide whether in all the circumstances it is just to grant the relief sought against the particular defendant."

33. At [30] Lord Bingham explained the importance but also the limitations of the principle that matters of planning judgement are for the relevant local planning authority and not the court in these terms:

> "As shown above the 1990 Act, like its predecessors, allocates the control of development of land to democratically-accountable bodies, local planning authorities and the Secretary of State. Issues of planning policy and judgment are within their exclusive purview. As Lord Scarman pointed out in *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 141, "Parliament has provided a comprehensive code of planning control". In R (*Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] 2 WLR 1389, [2001] UKHL 23, paragraphs 48, 60, 75, 129, 132, 139-140, 159 the limited role of the court in the planning field is made very clear. An application by a local planning authority under section 187B is not an invitation to the court to exercise functions allocated elsewhere. Thus it could never be appropriate for the court to hold that planning permission should not have been refused or that an appeal against an enforcement notice should have succeeded or (as in *Hambleton [*1995] 3 PLR 8) that a local authority should have had different spending priorities. But the court is not precluded from entertaining issues not related to planning policy or judgment, such as the visibility of a development from a given position or the width of a road. Nor need the court refuse to consider (pace *Hambleton*) the possibility that a pending or prospective application for planning permission may succeed, since there may be material to suggest that a party previously unsuccessful may yet succeed, as the cases of Mr Berry and Mrs Porter show. But all will depend on the particular facts, and the court must always, of course, act on evidence."

34. Lord Clyde expanded on the same point at [67] – [71] thus:

> [67] "The principal theme in the appellants' argument as it seemed to me was the concern that the court should not trespass into areas with which it has no concern. I certainly accept that it is for the planning authorities and not for the courts to see to the preparation and administration of plans and policies for the use of land. What uses should or should not be allowed of lands within the area of the authority, what developments should or should not be permitted to take place upon such lands, are questions for the planning authorities and not for courts of law to resolve. The expression "planning matters" may be too uncertain a use of language in this context. I also find the expression "planning code" which was sometimes used in the argument lacking in precision. The expression "planning merits" seems to me to be more exact, but I would prefer to identify the forbidden ground as comprising matters of "planning judgment".
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> [68] The factors which require to be considered in the making of a planning judgment are potentially many and varied. They include matters relating to the economic and social needs of the locality, the interests of the public and of the individual members of it who live there, the preservation of the environment and the protection of amenity. Lord Hoffmann observed in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, at p 780H: "If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State." The courts may consider the legality of a planning judgment but not the merits of the planning decision. In *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] 2 WLR 1389 this distinction was recognised and held to be consistent with article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. If the courts were to embark upon a reassessment of matters of planning judgment they would, to use the language of Lord Hoffmann in *R v Wicks* [1998] AC 92, at p 120F be subverting the whole scheme of the Act.

> [69] Planning authorities will in particular require to consider the human factor. In *Westminster City Council v Great Portland Estates plc* [1985] 1 AC 661, 670 Lord Scarman observed: "Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control." Certainly in the enforcement of planning control these personal and human factors must be taken into account. They will also play a part in the earlier stages of the drawing up of plans and policies as well, of course, in the decisions in individual cases whether or not some particular permission should or should not be granted. [70] But the enforcement of the planning decisions which have been reached by planning authorities does not in my view strictly involve the exercise of a planning judgment. The statutory provisions relating to enforcement are set out in a distinct part of the Town and Country Planning Act 1990, Part VII. They are in a broad sense "planning matters". Indeed the initiative to enforce planning control under these provisions lies with the authority. In deciding whether to take action in the event of a breach of planning control the authority will require to weigh a variety of factors which go beyond the considerations of the planning judgment in the light of which the plans were made and permissions granted or refused. The factors will now include the seriousness of the breach and its effect in the particular case. The authority will also require to consider which of the various methods of enforcement provided by the statute they should adopt. Enforcement notices and stop notices are courses which the authority may take at their own hand. So also is the breach of condition notice introduced by section 187A. But the injunction provided for by section 187B requires the intervention of the court. Parliament has expressly given the power to grant this particular form of remedy to the court. The authority must decide that the course is "necessary or expedient", but it is for the court, not for them, to issue the order.
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> [71] In exercising its power the court must not re-assess matters which are the subject of a planning judgment. But that does not mean that the factors which have been considered by the authority in making their planning judgment may not be properly taken into account by the court in deciding whether or not to grant this particular remedy. In looking at the factors which weighed with the authority the court is not embarking upon a reassessment of what was decided as matter of planning judgment but entering upon the different exercise of deciding whether the circumstances are such as to warrant the granting of the particular remedy of an injunction."

35. Finally, I take note of the approach articulated by Lord Scott at [99] – [101] saying:

> [99] "The criteria that govern the grant by the court of the injunction make clear, in my opinion, that the court must take into account all or any circumstances of the case that bear upon the question whether the grant would be "just and convenient". Of particular importance, of course, will be whether or not the local planning authority can establish not only that there is a current or apprehended breach of planning control but also that the ordinary statutory means of enforcement are not likely to be effective in preventing the breach or bringing it to an end. In a case in which the statutory procedure of enforcement notice, prosecution for non-compliance and exercise by the authority of such statutory self-help remedies as are available had not been tried and where there was no sufficient reason to assume that, if tried, they would not succeed in dealing with the breach, the local planning authority would be unlikely to succeed in persuading the court that the grant of an injunction would be just and convenient.
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> [100] In deciding whether or not to grant an injunction under section 187B the court does not turn itself into a tribunal to review the merits of the planning decisions that the authority, or the Secretary of State, has taken. The purpose of the injunction would be to restrain the alleged breach of planning controls and the court could not in my opinion properly refuse an injunction simply on the ground that it disagreed with the planning decisions that had been taken. If the court thought that there was a real prospect that an

> appeal against an enforcement notice or a fresh application by the defendant for the requisite planning permission might succeed, the court could adjourn the injunction application until the planning situation had become clarified. But where the planning situation is clear and apparently final the court would, in my opinion, have no alternative but to consider the injunction application without regard to the merits of the planning decisions.
>
> [101]. It does not, however, follow that once the planning situation is clear and apparently final it is not open to the court to take into account the personal circumstances of the defendant and the hardship that may be caused if the planning controls are enforced by an injunction. Planning controls are imposed as a matter of public law. The local planning authority in seeking to enforce those controls is not enforcing any private rights of its own. If a local authority mortgagee is seeking an order for possession against the mortgagor, or a local authority landlord is seeking an order for possession against a tenant, or a local authority landowner is seeking an order to remove squatters or to restrain trespass, the local authority is seeking an order to enforce its private property rights. It is as well entitled to do so as is a private mortgagee, landlord or landowner. The function of the court in civil litigation of that character is, in my opinion, to give effect to the private rights that the local authority claimant is seeking to enforce. But an application for an injunction under section 187B, or any other application for an injunction in aid of the public law is different. As Lord Wilberforce said in the *Gouriet* case, the jurisdiction to grant such injunctions is one of great delicacy and to be used with caution."

36. I will consider below the consequences of the decision in *South Bucks* for the question of the factors which can be taken into account in this case.

37. It is relevant to note that the questions of whether there has been a change of use and whether the change was material involve matters of law and of fact. They call for consideration of the underlying legal principles in light of the authorities which have given guidance on the considerations which do and which do not point to a particular use being as hotel or as a hostel. However, both questions are ultimately fact-specific and calling for the application of planning judgement to particular circumstances. It was against that background that the authorities were reviewed by Holgate J in *Ipswich* at [72] – [83].

38. It follows from this that the court will be in a position to assess the strength of arguments that there has been a change of use and that the change is material provided care is exercised and provided the court remembers that the exercise is fact-specific with the facts being matters for those charged with making planning decisions. However, the question of whether a material change of use is one for which planning permission should be given is in a different category. It is a matter of planning judgement within the purview of the local planning authority subject to the planning appeal process. That is "forbidden ground" for the court (to adopt Lord Clyde's language). In the context of this case this means that the Claimant's view that the material change of use which (on its case) has occurred is not worthy of planning permission is to be seen as matter for the Claimant and not the court. It is nonetheless to be noted that there has not yet been a formal planning decision to that effect in the way in which there would have been if the Defendant had submitted an application for planning permission.

39. The application before me is for an interim injunction to last until the final determination of the section 187B application. In *American Cyanamid v Ethicon* [1975] AC 396 the House of Lords set out guidelines governing the approach to be taken and

I adopt Christopher Clarke J's summary of the position in *Sabmiller Africa v East African Breweries* [2009] EWHC 2140 (Comm) at [47] and following with [47] and [48] in these terms being of note for current purposes:

> "[47] Both sides have filed a very considerable amount of evidence and very extensive skeleton arguments. It is not possible, on an interlocutory application such as this, to resolve conflicts of evidence on issues of fact on which the outcome of the case may depend. The general approach of the court in the exercise of its powers to grant an injunction under section 37 (1) of the Supreme Court Act 1981 is well known. If the court is satisfied that there is a serious question to be tried, it must go on to consider whether the claimant would be adequately compensated in damages and whether the defendant would be in a financial position to pay them. If the answer to both of those questions is in the affirmative, no injunction should normally be granted. If not the court must consider whether the defendant would be adequately compensated under the claimants undertaking as to damages in the event of his succeeding at trial. If the answer to that question is "yes" the fact that the defendant may succeed at trial is no bar to the grant of an injunction. Where there is doubt as to the adequacy of damages for both parties the court must determine where the balance of convenience lies. If matters are evenly balanced it may be wise to take such measures as are calculated to preserve the status quo.
>
> [48] These guidelines – derived from the speech of Lord Diplock in *American Cyanamid Co. Ltd v Ethicon* [1975] AC 396 – are just that. They are not a fetter on the Court's jurisdiction under section 37 to grant an injunction where it is just to do so: see Lord Goff in *Reg. v. Secretary of State for Transport ex p. Factortame Ltd* [1991] 1 A.C. 603 at 671E-674A; and Mance, LJ (as he then was) in *Bath and North East Somerset District Council v Mowlem Plc* [2004] BLR 153, at para 12. A fundamental principle is that the court should take whatever course appears to carry the lower risk of injustice if it should turn out to have been the "wrong" course - in the sense that the court either grants an injunction which should have been refused or refuses to grant an injunction that should have been granted: *Factorame* p 683, approving Hoffman J in *Films Review Ltd v Cannon Film Sales Ltd [*1987] 1 WLR 670,680."

40. In *Ipswich* Holgate J considered the application of the *American Cyanamid* guidelines to section187B cases. In exercising its discretion the court has to consider whether it is necessary in the particular case to enforce planning control by way of an injunction "rather than by other methods of enforcement" [88] with action by way of an enforcement notice being the "normal" [84] method of proceeding against a breach of planning control. At [91] and following Holgate J explained the way in which the principles which by reason of the decision in *South Bucks* govern that grant of a final injunction under section 187B apply in the context of an application for an interim injunction. At [108] and following Holgate J considered the balance of convenience, doing so in the context of a case where it was said that the proposed use as accommodation for asylum seekers would be a material change of use from hotel use. Having noted the "strong public interest in enforcement action being taken against breaches of planning control" the judge said, at [110] – [114]:

> "[110] In my judgment a convenient starting point is the statement of the Court of Appeal in the *Westminster* case that the distinction between hotel and hostel use is fine. In each case before this court there are factors pointing for and against the proposed use being a hostel use. Even if a hostel use would be involved, the key question still remains whether it would represent a material change of use. That would depend upon the planning consequences of the change. In each case that turns upon the planning harm identified by the claimant.

> [111] The nature and extent of that harm also goes to the seriousness of the alleged breach and the urgency or otherwise of bringing it to an end. During the course of the hearing Mr. Thomas rightly accepted that the claimants' justification for continuing the injunctions depends upon the seriousness of that alleged planning harm. Put another way, would the immediate restraint of the proposed use by injunction, rather than the use of other enforcement action, be "commensurate" with that harm.
>
> [112] The claimants accept that in each case the proposed use would not cause any environmental damage, or any harm to the amenity of neighbouring uses, or any harm to the character and appearance of the area. The buildings would not be altered. There would be no issues relating to traffic generation.
>
> [113] If an injunction is not continued, because such relief is not commensurate with the harm alleged, and other enforcement action were to be successful subsequently, the alleged hostel use could be brought to an end and the property then made available for hotel use. Accordingly, there would not be any irreparable damage or harm. Mr. Thomas points out that the non-availability of the property for hotel use over that period could not be reversed. But by definition, that harm will have been judged to be insufficient to justify the continuation of the injunction until any trial.
>
> [114] Undoubtedly there is a public interest in enforcement action being taken against breaches of planning control. But, as Mr. Brown submitted, the integrity of the planning system is not undermined by the normal enforcement regime, which allows an alleged breach of planning control to continue while the merits of an appeal are under consideration, unless, of course, a stop notice is served. The real question, therefore is, what is the strength of the public interest in an immediate injunction being granted before an alleged breach of planning control even begins. That depends upon the nature and extent of the harm alleged."

41. Of particular importance are the questions which Holgate J identified in the last sentence of [111] and the last two sentences of [114].

42. Holgate J emphasized that the questions of whether a particular use is use as a hotel and whether interim relief is or is not appropriate in a particular caser will be highly fact-sensitive. That is illustrated by the fact that in *Ipswich* decided on 11th November 2022; *Fenland DC v CBPRP Ltd* [2022] EWHC 3132 (KB) decided on 25th November 2022; and *Great Yarmouth BC v Al-Abdin* [2022] EWHC 3476 (KB) decided on 21st December 2022 Holgate J applying the same principles came to different conclusions as to whether use of a hotel to house asylum seekers should be restrained by an interim injunction. There is simply no general rule that use of a hotel to house asylum seekers either should or should not be subject to an interim injunction under section 187B.

Whether the Claimant could serve a Stop Notice.

43. For the Defendant Mr Riley-Smith contended that it was not necessary for the Claimant to seek an injunction under section 187B in order to stop the current use of the Bell because it could couple the service of an enforcement notice with a stop notice under section 183. Mr Coppel KC says that this course is not open to the Claimant because the use of the Bell to accommodate asylum seekers started more than 4 years ago.

44. The question is one of the proper interpretation of section 183(5). Mr Riley-Smith says that for the bar in that subsection to apply the relevant activity has to have taken place for more than 4 years. Here the Bell has not been used to accommodate asylum seekers for periods totalling more than 4 years and so the bar does not apply. I do not accept the

Defendant's interpretation of the subsection. In my judgement the Claimant is right to say that the reference in the subsection to the activity having been carried out for a period of more than 4 years requires consideration of whether the activity has taken place over a period of more than 4 years but does not require that the use has to have taken place for a total of more than 4 years. What is required is to identify when the relevant activity started and if that date was more than 4 years ago the bar on a stop notice applies.

45. I reach that conclusion for the following reasons:

i) The words "whether continuously or not" in the subsection contemplate that the activity will not have been continuous throughout the period of 4 years and so is a reference to the activity and not to the period of use.

ii) The subsection excludes from consideration any period during which the activity was authorized by planning permission. That is a reference to the period of time of authorization and not of use and so it is irrelevant whether the activity was taking place in that period.

iii) The purpose of the subsection is to prevent a stop notice being used against activity which started some time ago. The rationale of that can be readily understood by reference to the perception of injustice and to the potential hardship which could arise if a longstanding use were to be brought to an end by a stop notice. The hardship or unfairness comes not from the stopping of a continuous activity but from stopping an activity which first took place some time ago and the subsection identifies 4 years as the start date of that period.

46. Here the Bell was first used to accommodate asylum seekers more than 4 years ago and the Claimant is correct to say that it would not be open to it to serve a stop notice.

The Time which the different Courses of Action could take.

47. If instead of seeking an injunction the Claimant were to proceed by way of issuing an enforcement notice there would be a delay of at least 28 days between the service of the notice and the time when it came into effect. Mr Riley-Smith accepted that it would be likely that the Defendant would appeal against any such enforcement notice. He was not able to say that would definitely be done but given that the Defendant's case is that there has not been a material change of use it must be assumed that the Defendant would wish to maintain that position and to appeal against an enforcement notice. Mr Coppel submitted that it would then be a matter of "years not months" before the process was concluded. This was because of the prospect of an appeal against the decision of an inspector being made to this court under section 289 of the TCPA. In my judgement that was an unduly pessimistic assessment. An appeal under section 289 can only be made on a point of law and it must be assumed at this stage that an inspector would produce a decision which was not legally flawed and which would be accepted by the parties. In addition Mr Coppel was unduly pessimistic as to the time which would be needed for determination of an appeal against an enforcement notice. Nonetheless he was right to say that the process would take some time and in reality would be unlikely to be resolved until the early part of 2026 at the earliest.

48. If an interim injunction were not to be granted and the section 187B application were to continue a further period of time would pass before the matter was resolved. Time would be needed for the filing of further evidence and responses. Court time would need to be found and time would be needed for a hearing and for the judge to come to a decision. As a matter of reality even if a shortened timetable were to be imposed on the parties it is unlikely that a final decision on the section 187B application will be made until towards the end of this year.

The Claimant's Application for an Interim Declaration.

49. The Claimant sought an interim declaration that the use of the Bell for the purpose of accommodating asylum seekers is not use as a hotel within Class C1 of Schedule 2 to the UCO and that it was accordingly not a permitted use. Mr Coppel did not spend time on this part of the application in his oral submissions but he made it clear that the application for an interim declaration was being maintained.

50. The court does have power to make a declaration on an interim basis. It is, however, a power to be exercised with caution and I am satisfied that it is not appropriate to make an interim declaration here. Although, as will be seen below, there is considerable force in the Claimant's arguments that there has been a change of use the Defendant has counter-arguments which cannot simply be dismissed out of hand. In addition, as I have already explained, the question of the proper characterization of the use is fact-sensitive and for that reason alone this is not a case where an interim declaration is appropriate. Further, the second element of the proposed declaration, namely that the current use is not a permitted use, does not follow from the first element, namely that the current use is not use as a hotel. As Holgate J explained in *Ipswich* there will only have been development if there has not only be a change of use but if that change of use has been material. It follows that a declaration that the current use was not use as a hotel would not resolve matters and the court is not in a position at this stage to make a declaration that any change has been material.

51. The application for an interim declaration is, therefore, refused.

The Extent of the Dispute.

52. The Defendant accepts that the Claimant has shown a serious issue to be tried and that damages would not be an adequate remedy for the Claimant. Entirely sensibly, Mr Riley-Smith focused his arguments on the balance of convenience. There was dispute not only about where that balance fell but also about the matters which could properly be taken into account and the approach to be taken to those which could be. I will address those issues before turning to the application of the *American Cyanamid* guidelines.

53. It is, however, important to note that it is common ground that there are two competing considerations each of considerable weight which will need to be taken into account when the court determines the balance of convenience.

54. In favour of the Claimant and the grant of an injunction is the strong public interest in the enforcement of planning control. To understand the force of that interest it is necessary to have regard to the purposes of planning control. One of those purposes is so that the benefits and detriments of potentially controversial uses of land can be

considered in a structured and ordered way with democratic and professional input. The planning process enables the arguments for and against a development to be ventilated in public. It also enables the planning authorities to consider whether the potentially adverse effects of a proposed development can be mitigated by the imposition of conditions such as to render an otherwise unacceptable development acceptable. The ventilation of such arguments will, on occasion, enable those concerned about the effects of a proposed development to be satisfied that their concerns are unwarranted or for them to be satisfied that appropriate conditions have removed the concerns. On other occasions those concerned about the prospect of a development will be satisfied by the assurance that their concerns have been ventilated and formally considered. That public and structured consideration is by no means the sole or even the most important purpose of planning control but it is part of the function of the system of planning control and it is a purpose which is subverted when a landowner acts in breach of planning control. However, in considering the degree of that subversion and the consequences which should follow from it the court must remember (as pointed out by Holgate J in *Ipswich* at [114]) that when an enforcement notice is served then, unless a stop notice is served, an alleged breach of planning control is allowed to continue until any appeal against the enforcement notice has been resolved. The grant of an injunction bringing the alleged breach to an immediate end is, therefore, a step beyond the normal enforcement process.

55. A factor of considerable force in favour of the Defendant and against the grant of interim relief is the important public policy objective of accommodating destitute asylum seekers. Holgate J addressed that point thus at [21] – [26] in *Ipswich:*

> "[21] Mr Kingham's document states that the number of destitute asylum seekers requiring accommodation has reached record levels in the UK, in part because of the requirements of cohorts under the Afghanistan and Ukraine relocation schemes. The number of asylum seekers needing accommodation and subsistence was 48,042 on 31 March 2020, 56,812 on 31 March 2021, and 80,399 on 31 March 2022, the last figure representing an increase of 67% over the previous 24 months.
>
> [22] The number of asylum seekers requiring accommodation has continued, and is continuing, to grow substantially. At the end of September 2022 provisional Home Office estimates were that about 99,000 asylum seekers were being accommodated, of whom 38,3000 were in short-term accommodation.
>
> [23] Part of this increase in destitute asylum seekers whom the SSHD is obliged to accommodate relates to the arrival in the UK of people in small boats. There were 299 such people in 2018, 1,843 in 2019, 8,466 in 2020, 28,526 in 2021 and over 40,000 so far in 2022.
>
> [24] Where an asylum seeker is at immediate risk of homelessness, the Home Office provides emergency accommodation under s. 98 of the 1999 Act. In what are described by Mr. Kingham as "normal" times, that is before the Covid pandemic, the increase in asylum seekers from the Afghanistan and Ukraine cohorts and arrivals by small boats, that accommodation would generally be provided in one of eight "initial accommodation" sites across the UK, in the form of a "full-board multi-person hotel or accommodation setting" ("Core IA"). Individuals would remain in IA for a few weeks whilst their needs for support were assessed and longer-term arrangements made. Thereafter, accommodation under s. 95 has generally been provided in "dispersal accommodation" across the country, often in the form of self-catered furnished flats and houses. Such accommodation is provided by third party suppliers under regional contracts, who are to consult with local authorities before a property is used. Requirements for support services and location may constrain

> the suitability of premises and the speed of deployment. Because many asylum seekers are vulnerable, the accommodation must be exclusive and not shared with other people.
>
> [25] Where the need for emergency accommodation temporarily exceeds capacity at IA sites, block-booked hotels are used as a short-term contingency, whilst longer-term dispersal accommodation is procured. Contingency IA is substantially more expensive to the taxpayer and its temporary nature does not allow for the same level of services to be provided. Suitable sole-use contingency IA is becoming more difficult for accommodation providers to source. It is only ever intended to serve as short-term mitigation.
>
> [26] The recent exceptional level of increase in the number of destitute asylum seekers entitled to accommodation under the 1999 Act has significantly exceeded the available and timely supply of long-term accommodation. Accordingly, the main way in which the Home Office has sought to meet the situation has been by expanding the use of short term emergency or contingency accommodation, such as block-booked hotels. However, the supply of that accommodation has not kept up with the increasing needs. This has resulted in over 4,000 migrants being held at the processing centre in Manston, Kent "for considerably longer than the expected 24 hours."

56. I was not provided with up to date figures on the number of asylum seekers who need to be accommodated but it was not suggested that the need had diminished from the time of Holgate J's consideration. It follows that there is a real need which the Secretary of State for the Home Department has a statutory duty to meet. The use of the Bell to accommodate asylum seekers provides assistance in meeting that need and that is a factor of considerable weight.

The Proper Characterization of any Breach of Planning Control by the Defendant.

57. The Claimant says that not only has there been a breach of planning control by the Defendant but that the breach is flagrant and that the Defendant's behaviour has been "surreptitious". Mr Coppel submitted that the Defendant's behaviour could be so characterized because it had indicated that it would make an application for permission for change of use and then changed its position at short notice.

58. The Defendant does not accept this characterization. Mr Riley-Smith pointed to the fact that the Defendant had acted openly and said that the Claimant had been kept informed. In that regard he pointed to the fact that before CTM had entered its contract with the Defendant there had been tri-partite discussions between CTM, the Home Office, and the Claimant in which those present had addressed how to handle the placement of asylum seekers at the Bell and in which the limit of 138 asylum seekers had been agreed.

59. The alleged breach of planning control is not flagrant in the sense of being a clear breach taken in deliberate defiance of the controls on development. There is genuine scope for debate as to whether there has been a change of use and still more as to whether the change is a material one. The Defendant has, moreover, acted openly. This is not a case where a person has sought to conceal their actions hoping that the planning authorities would not be alerted to what was happening until facts had been created on the ground.

60. Although the Defendant has not acted surreptitiously it has acted deliberately. The Defendant was aware that the Claimant through its planning officers had consistently taken the view that if the Bell was lawfully to be used to accommodate asylum seekers permission for change of use would be needed. Initially, the Defendant had indicated

that it would seek planning permission. That position then changed. The Defendant decided not to seek planning permission. It did so after receiving advice from the Home Office and as a result of that advice the Defendant adopted the position that planning permission was not needed and that the use of the Bell to accommodate asylum seekers was not a material change of use. That position was adopted in good faith and the Defendant acted openly. It did so, however, knowing that the Claimant as Local Planning Authority took a different view. So, although the Defendant's action was neither flagrant nor surreptitious it was deliberate. The Defendant was deliberately confronting the Claimant with a choice between either accepting the position and abandoning the Claimant's consistently expressed understanding of the legal position or taking enforcement action. It is a significant consideration that the effect of the Defendant's deliberate decision is that unless injunctive relief is given the Claimant and the residents of Epping will have to bear with the consequences of the use of the Bell to accommodate asylum seekers until the lawfulness of that use has been determined through the enforcement process. If that use is ultimately found to have been lawful (on the footing that the Defendant is right to say that it is not a material change of use) then that will not have been any detriment. If, however, the Claimant is correct in saying that the use is unlawful then there will have been detriment resulting from the Defendant's deliberate decision. It is also relevant that as a consequence of the Defendant's deliberate decision there has not been the structured and considered assessment of the position through the planning process to which I referred above and which is one of the purposes of the system of planning control. The force of that point will have to be considered against the argument for the Defendant that there has been no material change of use and so no requirement for such consideration.

The Nature of the Matters which can be taken into Account when considering the Balance of Convenience.

61. The Claimant contends that in considering the balance of convenience I am to take a wide view. It submits that the factors in favour of an injunction in that exercise are not to be limited to questions of planning harm. Mr Coppel submitted that in *Ipswich* Holgate J was not, in fact, limiting the relevant matters to planning harm but to the extent that the judge was doing so at [11] and [114] he was wrong. In support of that argument Mr Coppel relied on passages in *American Cyanamid,* in *South Bucks* and in *R (Governing Body of X) v OFSTED* [2020] EWCA Civ 594 at [63].

62. I do not accept that the approach is as unconstrained as the Claimant contends. The references on which the Claimant relies are to be read in context. In *American Cyanamid* the reference to the breadth of the matters to be considered was made in the context of the explanation that the court's object was to protect against injury to a person's legal rights (see at page 406E). In *South Bucks* the context was, indeed, that of a section 187B injunction but the reference to the breadth of the relevant considerations was made in the context of considering whether the personal circumstances of a defendant could be relevant to the court's consideration of whether the grant of an injunction was just and convenient. It does not follow that matters are at large when considering the factors in favour of an injunction. The passage in the *OFSTED* case on which the Claimant relied was a quotation of a passage from the speech of Lord Goff in *R (ex p Factorame) v Secretary of State for Transport (No 2)* [1991] 1 AC 603 at 673. In that passage Lord Goff emphasized the importance and relevance of the fact that one party is a public body performing public duties and enforcing the law but the

effect of the passage does not go beyond that and it remains necessary to have regard to the nature and purpose of the legal duty being enforced.

63. The purpose of an injunction under section 187B is the restraint of a breach of planning control. The claimant in such a case is seeking relief in its capacity as a local planning authority. Matters which are not material to the existing or anticipated breach of planning control cannot be relevant to the purpose of seeking the injunction. The court must look at the balance of convenience from that starting point or through that lens. The question of the balance of convenience cannot be addressed in the abstract or by reference to some general question of desirability.

64. It follows that to be relevant to the balance of convenience as a factor in favour of an injunction a matter must relate to planning harm or to the breach of planning control. I do not understand Holgate J to have been excluding the latter element which is very closely related to the former but to the extent that it was I respectfully differ from his approach. Matters relating to the breach of planning control are relevant because in seeking an injunction under section 187B a local planning authority is acting to address the breach of planning control. The section refers to matters in those terms and I have explained above the role which the planning control system plays in ensuring the open and structured consideration of proposals for development. Although the prevention of planning harm is a major element in the public interest in the enforcement of planning control it is not the only one and the interests which the Claimant here is acting to protect include those of the public in the proper operation of the planning control system.

65. It follows that the factors to be taken into account must be such as are at least potentially relevant in the process of considering whether planning permission is warranted or not. Matters which would be wholly irrelevant in that process can play no part in the consideration. However, the fact that particular concerns could be assuaged or addressed in the course of the consideration of a planning application or of an appeal against an enforcement notice does not mean that those matters cannot be taken into account in the balance of convenience. That is particularly so in circumstances such as those here where the Defendant made a deliberate decision not to seek planning permission but to take its stand on the view that the use of the Bell to accommodate asylum seekers was not a material change of use.

66. In addition, although the court is to assess the balance of convenience in the context of the purpose of section 187B it must remember that the purpose of having regard to the balance of convenience is to seek to minimise the risk of injustice if a different view of the merits or appropriate course is ultimately taken. Here the risk of injustice to the Claimant is of the consequences if the injunction is refused and it is ultimately found that the current operation at the Bell was unlawful and should have been restrained. The risk of injustice to the Defendant is of the consequences if the Defendant is restrained from a use which is ultimately found to have been lawful and which should have been permitted to continue.

The Nature of the Evidence required at this Stage.

67. Mr Riley-Smith was critical of the evidence on which the Claimant relied. He pointed out that although the Claimant's witnesses referred to concerns about crime and about the effect on local schools and other facilities there was no evidence from the police,

from schools, or from affected businesses. Mr Riley-Smith did not quite go so far as to contend that the evidence should be disregarded but his submission was that it should carry little weight.

68. Mr Riley-Smith was right to say that the evidence provided was solely from council officers and from one council member. The evidence was very far from being in the detail which would be expected at a planning inquiry or the final hearing of the section 187B application. However, a number of points arise in that regard. The first is that by deliberately choosing to act without seeking either planning permission or a certificate of lawful use the Defendant has side-stepped the detailed analysis which there would be in such a process. At the risk of repeating points made above the Defendant chose not to engage in the process in which the concerns about the proposed use of the Bell could have been expressed and addressed. I do not overlook the fact that it is the Defendant's case that its activity is lawful and that it was not required to engage in that process and that the question of whether that case is well-founded cannot finally be determined at this stage. The second point is the council officers and Cllr Whitbread are in responsible positions and account is to be taken of those positions and of their roles in considering the weight to be given to their evidence. Finally, it is of note that the evidence in large part is based not on the harm which it is feared will flow from activity which has not yet taken place but rather on concerns based on what has in fact happened since the recent use of the Bell started. In the former case care is needed to guard against speculation; against the making of assumptions; and against unjustified stereotyping. The risk of the evidence being affected by such matters remains where the activity has already begun but it is reduced.

69. It follows that the evidence on which the Claimant relies is not to be discounted to the extent for which Mr Riley-Smith contends. It is nonetheless to be considered with care. It is necessary to examine what is said with care and to disregard such parts as can properly be characterized as mere assertion or assumption.

The Relevance of Lawful Protests about the Use of the Bell.

70. There have been lawful protests against the use of the Bell to accommodate asylum seekers. Those protests have caused a degree of disruption to the lives of local residents. Mr Riley-Smith accepted that the consequences of lawful protests can in some circumstances be a material consideration operating against the grant of planning permission but said that such protests were not of themselves a matter of planning harm.

71. Considerable caution is needed before any weight is given to this factor. The public generally are expected to tolerate a degree of disruption from lawful protest. It is a matter of degree but an element of disruption from such activity is part of the price to be paid for living in an open society. In addition, the fact that a proposed use will attract protest cannot, without more, be a ground for a refusal to permit an activity which would otherwise be acceptable in planning terms. The threat of protest cannot operate as a veto to prevent otherwise acceptable activity. All will depend on the circumstances and there will be particular limited circumstances in which either the degree of protest or particular features of the location of the relevant site will be such that the prospect of lawful protest can operate as a material consideration against the grant of permission.

72. However, the position in this case is that the Claimant contends that the use of the Bell to accommodate asylum seekers is unlawful by reason of being a material change of

use from the lawful use. If interim relief is refused but that contention is ultimately found to be correct then the amenity of local residents will have been affected not by protest against a lawful use but by protest against an unlawful use in which the Defendant had engaged in breach of planning control. That aspect of the matter is factor which it is appropriate to take into account as standing in favour of the grant of relief in the assessment of the balance of convenience albeit as a factor of limited weight.

The Relevance of Unlawful Activity in Opposition to the Use of the Bell.

73. Even greater caution is needed before any weight is attached to the consequences of the unlawful activity in which persons hostile to the current activity at the Bell have engaged. The measures taken to address that activity have had an effect on the amenity of local residents. However, just as there is to be a degree of toleration for lawful protest even more so is there to be acceptance of measures taken to address unlawful activity. The price to be paid for knowing that a citizen's own lawful activity will be protected against disruption by the unlawful actions of others (and protected if need be by measures disrupting the lives of others) is an acceptance of disruption caused by measures taken to protect the lawful activity of other citizens.

74. If the Defendant's use of the Bell were to be established to be unequivocally lawful then matters would end there. There could be no question of the unlawful actions hostile to that use being taken into account. The difficulty for the Defendant is that this is not the position. There is a prospect of the court ultimately concluding that the Defendant's use of the Bell is unlawful. Of course, even if the use were found to be unlawful by reason of being an unauthorized material change of use that would not justify the unlawful actions of those hostile to that use and to some extent local residents must remain accepting of the measures taken to address those actions. Nonetheless, account is to be taken of the impact on the amenity of local residents of the measures taken to address the unlawful actions of those hostile to the use of the Bell. The prospect that those measures (with the consequent impact on amenity) will have been taken to protect activity by the Claimant in breach of planning control is factor to be taken into account in determining the balance of convenience though the weight which can be attached to it is markedly limited.

The Relevance of the Fear of Crime.

75. The Defendant accepted that public concern about the fear of crime being generated by a proposed use can be a relevant planning consideration as was explained in *West Midlands Probation Committee v Secretary of State for the Environment* (1998) 76 P & C R 589. It is of note that the existence of fear and concern is the relevant factor. The feared criminal activity will have a direct effect on the amenity of its victims if it takes place. However, the fear of crime has an effect on amenity as well. The amenity of a person who modifies his or her behaviour in response to justified concern as to offending by others is also affected. A person does not have to be a victim of crime for that person's amenity to be affected by a justified fear of crime.

76. However, as explained by Buxton LJ in *Smith v First Secretary of State* [2005] EWCA Civ 859 at [9] – [12] the fear must be real; it must be based on evidence; and must be focused on the use of the land for the particular purpose.

77. The court and a local planning authority must act on evidence and must require such concerns as are taken into account to have "some reasonable basis" (per Buxton LJ). To do otherwise would be to give weight to fears based on supposition, prejudice, or ignorance. That caveat has particular weight when the court or a local planning authority is considering applications for a prospective use. The court cannot in the absence of clear evidence accept a proposition that asylum seekers are more likely to commit offences than others. To that extent I agree with the analysis set out by Planning Inspector Jones in his appeal decision of 26th June 2023 at [5] – [11] that fear of crime can carry only very limited weight in the absence of evidence though it is of note that the Inspector correctly proceeded on the footing that such fear was capable of being a material consideration and gave it some weight. Just as speculation that asylum seekers are more likely that others to offend is impermissible so is speculation in the other direction. Inspector Jones appears to have fallen into that trap in saying, at [16], that it seemed likely that asylum seekers would "wish to be well-behaved". Unevidenced assumptions based on pre-conceptions in either direction are not open to the court.

78. What can make the difference is the presence of evidence. That is why the fear of crime was given weight in the *West Midlands Probation Committee* case.

79. As I have noted above the evidence of the council officers and council member on which the Claimant relies is to be given more weight than Mr Riley-Smith conceded. There are two further factors here.

80. The first is that there have been three arrests of persons placed in the Bell. Those were arrests for a variety of offences but include arrests in respect of an incident of an alleged sexual assault which took place away from the Bell. Considerable caution is needed in assessing the weight to be given to those matters. An arrest may be wholly unjustified; there may be a wholly innocent explanation for the behaviour in question even if an arrest is lawful; and there are a whole host of reasons why a direct correlation cannot be made between the fact of arrests and the incidence of crime. Nonetheless, it is understandable that the arrests form a basis for the local concern. The arrests have occurred in a relatively short period and have arisen when no more than 138 asylum seekers are accommodated in the Bell at any time. The consequence is that the fear said to be felt by local residents cannot be dismissed as solely speculation based on fear of what might happen from an activity which has not yet begun.

81. The second factor is that if the Defendant had chosen to make an application for planning permission there would have been an opportunity for the concerns of local residents and of the Claimant to be ventilated and addressed either in advance of the placement of asylum seekers or at an early stage. If that had been done there would have been a real prospect of concerns being assuaged either by an explanation provided in support of the application or by the imposition of conditions enabling those with concerns to be assured that appropriate measures were in place. That did not happen because of the course the Defendant chose to take.

82. Against that background I am satisfied that the fear of crime being committed by those accommodated in the Bell is a relevant factor to be considered in the balance of convenience operating in favour of the grant of interim relief. It is, however, a factor of only limited weight.

Whether the Claimant has delayed in seeking an Injunction.

83. A person seeking interim relief from the court must show that there has been no undue delay in coming to the court for that relief. The current use of the Bell to accommodate asylum seekers began in early April 2005. The claim for an injunction was not issued until 11th August 2025. Should I conclude that there has been delay on the part of the Claimant such as either to preclude the grant of interim relief or to weigh in the balance of convenience against the grant of relief?

84. It was only on 15th May 2025 that the Defendant told the Claimant's planning officers that it would not, as had been anticipated, apply for planning permission for a change of use. The Claimant is not to be criticized for failing to seek an injunction before then. It was entitled to proceed on the basis that an application would be made and would be considered as a normal part of the planning process. Indeed, if the Claimant had sought an injunction before then it would have had to disclose the fact that an application for permission was anticipated and this would have been a potent consideration against the grant of an injunction.

85. In respect of the period since then the Claimant's stance is that it has come to court as a last resort after other forms of persuasion have failed and after its concerns have been heightened by events. I am satisfied that there was no inappropriate delay. The Claimant is not to be criticized for awaiting developments before coming to the court. It is of note that there is no suggestion that the Claimant caused the Defendant to believe either that it was accepting the Defendant's argument that there had not been a material change of use or that it regarded this use of the Bell as acceptable.

86. Therefore, if interim relief is otherwise justified it is not to be refused on the ground of delay on the part of the Claimant.

The Relevance of the Financial Impact of an Injunction on the Defendant.

87. A private person or body seeking an interim injunction in civil litigation to enforce private law rights will normally be required to provide a cross-undertaking in damages. Such a cross-undertaking is not normally required from a public body acting to enforce the public law as a matter of duty. The Claimant is such a body and there is no suggestion that it should be required to provide a cross-undertaking in the circumstances of this case.

88. Mr Riley-Smith submits that I should take into account in the balance of convenience the financial impact which the Defendant will suffer if I grant the injunction sought by the Claimant and it is subsequently established either that the Defendant's actions did not amount to a material change of use or that the injunction should otherwise not have been granted. The Claimant resists this argument. Mr Coppel referred me to the decision of the Supreme Court in *FSA v Sinaloa Gold* [2013] UKSC 11, [2013] 2 AC 28. He submitted that this was authority for the proposition that the absence of a cross-undertaking should not be used to stifle the actions of a public body in seeking to enforce public law rights. He submitted that to have regard to the potential financial impact on the Defendant in the balance of convenience would amount to stifling those actions and so was impermissible.

89. I reject Mr Coppel's submissions in that regard. The decision in *Sinaloa Gold* is authority for the proposition that the absence of a cross-undertaking does not preclude the grant of a freezing injunction in favour of a public body enforcing its duty. However,

it is not authority for saying that the financial impact on a defendant cannot be a factor in the balance of convenience. Indeed, at [44] Lord Mance makes the opposite point and expressly says that the potential for a defendant to suffer uncompensated loss is a matter to be taken into account.

90. In *Ipswich* Holgate J explained, at [120], that he regarded the financial impact which an injunction would have on the defendant and that the contract to use the premises there to accommodate asylum seekers was a financial lifeline for the defendant as "a significant factor" in the balance. I respectfully agree with that approach as a matter of principle and am satisfied that the potential financial effect on the Defendant is a relevant consideration here.

Whether a serious Issue has been shown.

91. The Defendant correctly accepts that the Claimant has shown a serious issue to be tried as to whether there has been a material change of use such as to amount to a breach of planning control.

The Adequacy of Damages.

92. The Defendant also accepts that damages would not be an adequate remedy for the Claimant if an injunction were to be refused. As Holgate J noted in *Ipswich* at [105] it would not even be an available remedy. I have set out above my assessment of the relevance of the financial impact on the Defendant.

The Strength of the Claimant's Case.

93. The strength or weakness of a party's case can be a relevant factor to be weighed in the balance of convenience at the interim relief stage. However, the normal course is that beyond assessing whether a serious issue has been shown the court does not need either to assess the strength or weakness of the case being put forward nor to have regard to it in the balance of convenience. That is because as Lord Dipock explained in *American Cyanamid* at 407H:

> "it is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration".

94. Here both parties say that this is an exceptional case where the court should have regard to the strength of the case. The Claimant says that the strength of its argument that there has been a material change of use is such that the strength can be recognized at this stage and should be taken into account in the balance of convenience. The Defendant says that the weakness of the Claimant's case is so readily apparent that even though a serious issue has been shown the court should regard the weakness of the case as a factor weighing against the grant of relief.

95. It is, therefore, necessary for me to assess the strength of the parties' respective cases. In doing so I am mindful that the case remains at the interim stage where there is limited evidence (and markedly less detailed evidence than could be expected at a final hearing and even more so than would be available if the matter were being considered at a planning appeal before an inspector); where the parties have had limited opportunity to

advance detailed arguments; where the court's opportunity for mature reflection is limited; and where the issues involve questions not only of fact but also of planning judgement.

96. The questions to be considered are whether there has been a change in the use of the Bell and if there has been whether that change is material in planning terms. If there has been a material change of use then the question of whether planning permission should be granted for that change of use is a matter for the planning judgement of the Claimant subject to any appeal made against a refusal. The likely outcome of that exercise of planning judgement is not a matter for the court at this stage. Although the Claimant's current stance is that planning permission would not be granted there has been no application for permission. If one were to be made it would have to be considered by the Claimant on its merits and there would be scope for the Defendant to address the concerns which have been expressed by the Claimant.

97. In *Ipswich* at [72] and following Holgate J surveyed the case law "on what may be considered to be a hotel or a hostel" emphasizing that the case law was to be seen as "providing guidance on relevant considerations in determining what is ultimately a question of fact." I have had regard to the authorities considered by Holgate J and will not rehearse that survey here.

98. It is to be remembered that the questions here are not whether the current use is use as a hostel but whether there has been change of use from use as a hotel and whether that change is material. There is considerable force in the Claimant's contention that the current use is not use as a hostel but is a *sui generis* use. In the circumstances of this case comparisons with hostels in the form of youth hostels, nurses hostels, or student hostels or the like of the kind addressed by Glidewell J (as he then was) in *Commercial and Residential Property Development Company Ltd v Secretary of State for the Environment* (1981) 80 LGR 443 is a distraction.

99. There are a number of factors which operate against a finding that there has been a change of use. The principal ones are:

    i) There have been no internal structural changes in the Bell.

    ii) The external appearance of the Bell is unaltered – the presence of security fencing erected to address recent unlawful hostile activity is to be disregarded for these purposes.

    iii) The Defendant's staff continue to operate the facilities at the Bell and to provide the services there.

    iv) Catering, cleaning, and related services are provided for those accommodated at the Bell in the same way as they previously were for hotel guests.

100. There are, however, other factors which would support a finding of a change of use namely:

    i) Those accommodated are all of one category of person namely single male asylum seekers.

ii) The entirety of the Bell is devoted to providing accommodation for those persons pursuant to an agreement with CTM and is to be so devoted for a significant period of time (it is the latter element which distinguishes the situation from that of a block booking of a hotel for conference or training course).

iii) Those accommodated have no choice in the location of the premises in which they are placed. They did not choose to come to the Bell and have no control over how long they are to stay there.

iv) None of those accommodated are paying for themselves.

v) Those accommodated have no choice as to their rooms nor as to those with whom they are to share. In most cases they will be sharing rooms with persons with whom they were not previously acquainted.

vi) None of those accommodated in the Bell has anywhere else to live in the United Kingdom.

vii) The Defendant is required to follow the instructions of the Home Office (presumably mediated through CTM) as to the room in which and with whom the asylum seekers are to be placed. The Defendant is expressly prohibited from agreeing to any requests for an upgrade of accommodation.

viii) Those accommodated in the Bell may come and go as they please but any of them who intends to leave for more than one day must obtain prior authorisation from the Home Officer. In addition if any resident is not seen for more than one day the Defendant is required to notify CTM and the Home Office. The Defendant is also required to obtain a signature from each resident each day.

ix) Security staff and a welfare officer are present to protect the residents and to attend to their welfare needs.

x) None of the facilities of the Bell are available for use by non-residents.

101. In considering the strength of the Claimant's case on this question I have had regard to Holgate J's reminder that the Court of Appeal has said that the distinction between hotel and hostel use is a fine one. Although a fine one the distinction is a real one and I come back to the point that the question is not whether the current use is as a hostel but whether there has been a change from use as a hotel. In light of the factors I have just set out there is very considerable force in the contention that there has been such a change here. Mr Coppel's point that "the Bell is not a hotel for those who are placed there" is a powerful one.

102. I turn to the question of whether such change of use as there has been was material for the relevant planning purposes. In that regard it is "relevant to consider not only the on-site but also the off-site effects of the character of the use of the land" (Holgate J in *Ipswich* at [69]. There are a number of factors which support the Claimant's contention that the change was a material one:

i) The nature of the on-site operation has changed in the extensive ways I have set out above.

ii) The opportunity for use of the Bell by members of the wider community has gone. It no longer provides a resource for dining, receptions, functions, and the like. I do not overlook the fact that such use has been very markedly reduced for a number of years but any scope for such use has totally gone for the duration of the use of the Bell under the contract with CTM.

iii) In addition, it is at least arguable that the contribution which those currently resident at the Bell can make to the local community will be different from that which could have been made by visitors to a hotel. Those currently resident there are all single males who will be resident for a significant period of time; who are resident there without choice; and who *ex hypothesi* are destitute or at risk of destitution (otherwise the Secretary of State would not be under a duty to accommodate them). Through no fault of theirs the contribution they can make (particularly in the form of the use of local services) and the role they can play in the community is different from that of those visiting a hotel in a particular place for business or leisure purposes.

103. I remind myself of the limitations of the material before me and of the need for considerable caution in making an assessment of the prospects at the interim stage. Nonetheless, the strength of the Claimant's contention that there has been a material change of use is such that it operates as a factor in favour of the grant of an injunction in assessing where the balance of convenience falls.

The Balance of Convenience.

104. Determining where the balance of convenience falls is not an arithmetic exercise in which a particular numeric value is attached to the relevant factors and a calculation then made of whether there is a higher total in one column or the other. Instead, matters are to be seen in the round having regard to the purpose of the balancing exercise which is to minimise the risk of injustice being caused by the decision to grant or to refuse interim relief.

105. The factors operating in favour of granting interim relief are as follows. It will be seen that the reasoning underlying a number of these factors is more fully set out above.

106. The public interest in the enforcement of planning control is a factor of particular importance.

107. Although the Defendant's actions were not flagrant or surreptitious they were deliberate. The Defendant acted in good faith but chose to take its stand on the position that there was no material change of use. The Defendant did so in the knowledge the Claimant as local planning authority took a different view and believed that permission was necessary. It thereby side-stepped the public scrutiny and explanation which would otherwise have taken place if an application for planning permission or for a certificate of lawful use had been made. It was also deliberately taking the chance that its understanding of the legal position was incorrect. This is factor of particular weight in the circumstances of this case.

108. The strength of the Claimant's contention that there has been a breach of planning control and that the current activity is the result of a material change of use is such that exceptionally it is a factor to be taken into account in the balance of convenience in support of the grant of interim relief.

109. For the reasons set out above the fear of crime resulting from the use of the Bell; the need to address lawful protests; and the consequences of the actions taken to address unlawful activity are relevant factors in support of interim relief. There are all factors of limited weight and the weight diminishes as one moves along that list. They are, however, matters having an effect on the amenity of local residents through the fear of crime and the need to address the reactions which that use has generated. If the use continues and is ultimately found to have been unlawful the position in respect of those matters can revert to its former state. However, those whose amenity has been affected in that period will not be compensated and to that extent there is a risk of irremediable harm.

110. Related to the preceding factor and a consideration in the weight being attached to it is the fact that the Claimant's application is based on concerns arising from the actual use of the Bell. Unlike the situation in the *Ipswich, Fenland,* and *Great Yarmouth* cases the relief sought is not precautionary. There is force in the Claimant's contention that it is not inviting the court to speculate as to the impact on amenity which might result from a future use but is pointing to an impact on amenity which has already been suffered and is continuing.

111. The Claimant submitted that there was a risk of irremediable harm in that prolonged continuation of the use of the Bell could result in community tensions which would not heal. That amounted essentially to speculation and I take no account of it.

112. The Claimant pointed to two of the planning policies in the relevant local development plan and said that the use of the Bell to accommodate asylum seekers was inconsistent with those. The situation was markedly different from that of the narrowly-focused and clearly relevant planning policy with which Holgate J was concerned in *Great Yarmouth* and I attach no weight to this consideration.

113. The <u>factors operating against the grant of interim relief</u> are as follows.

114. The most important factor against the grant of interim relief is the importance of the public interest in the accommodation of destitute asylum seekers. As noted above that is a public interest recognised by the imposition of a statutory duty on the Home Secretary and the use of the Bell to accommodate asylum seekers is an element in the performance of that duty. This is coupled with the consideration that those currently accommodated in the Bell will required to move if interim relief is given and there will be a consequent disruption to their lives. All of them are now registered with local medical practices and there will be disruption in that respect as well as in the move to a different location. In that regard I reject the Claimant's contention that it will be less disruptive for those at the Bell to move now than it would be if they had to move later if an injunction is refused now but is ultimately granted.

115. The financial effect on the Defendant if it is not able to use the Bell to accommodate asylum seekers is also a consideration of real weight. If the current use ceases the Bell will not, at least in the medium term, return to hotel use and there will be a real financial

impact on the Defendant. There will be some scope to limit this by giving directions to ensure that the final hearing is as soon as practicable but there will nonetheless be such an effect and it will amount to irremediable harm suffered by the Defendant.

116. The breach of planning control has not been definitively established. Although I have concluded that the strength of the Claimant's case is such that it weighs in favour of granting interim relief it is to be remembered that a final decision has not been reached and it is possible that the final conclusion could be that the Defendant is right to say that there has been no breach of planning control.

117. The Bell was formerly used to accommodate male asylum seekers without difficulty and another hotel in the Claimant's area is also being used for such accommodation without difficulty. The Defendant contends that the current application has been triggered by unlawful activity to which no weight should be attached and by unjustified speculation. I have explained above the limited weight to be given to the fear of crime and to the consequences of the reactions (both lawful and unlawful) to the use of the Bell. The Claimant is not, however, to be criticized for seeking to address the problem which has arisen in relation to the Bell. To the extent that the fact that the Claimant did not seek an injunction in respect of the earlier use of the Bell and has not done so in respect of the other accommodation is relevant it operates in favour of the grant of relief as demonstrating that the Claimant's approach is addressing particular circumstances.

118. It is to be remembered that the normal method of enforcement action is by way of an enforcement notice with the use continuing until determination of its lawfulness through the enforcement process. Relief by way of a section 187B injunction is a departure from the norm and the grant of an interim injunction even more so.

119. No one factor is determinative by itself and I have looked at matters in the round. My conclusion on this issue is that the balance of convenience falls in favour of the grant of interim relief. Notwithstanding the particular importance of the first two factors against interim relief the force of the factors in favour of it, and in particular of the first three, is such that the risk of injustice is greater if that relief were to be refused and an injunction is ultimately found to be appropriate than if the relief were to be granted and the court ultimately decides not to grant an injunction.

Conclusion.

120. In those circumstances the Claimant is to be granted interim relief. I will hear submissions on the form which that relief should take and on the directions for the further conduct of the case.