Neutral Citation Number: [2026] EWCA Civ 264

Case No: CA-2025-002989

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MR JUSTICE MOULD
[2025] EWHC 2937 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2026

Before:

LADY JUSTICE ANDREWS
LORD JUSTICE HOLGATE

- -

Between:

Epping Forest District Council	**Appellant/Claimant**
- and –	
Somani Hotels Limited	**Respondent/Defendant**
- and –	
(1) Secretary of State for the Home Department **(2) Clearsprings Ready Homes Limited**	**Interveners**

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Philip Coppel KC and Natasha Peter (instructed by **Sharpe Pritchard LLP**) for the **Appellant**
Jenny Wigley KC and Piers Riley-Smith (instructed by **Richard Buxton Solicitors**) for the **Respondent**
James Strachan KC and Katharine Elliot (instructed by **Government Legal Department**) for the **First Intervener**
Chris Buttler KC and Jacqueline Lean (instructed by **Clearsprings Group**) for the **Second Intervener**

Hearing date: 5 March 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 13 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Andrews and Lord Justice Holgate:

1. Under the Town and Country Planning Act 1990 ("TCPA 1990") the appellant, Epping Forest District Council ("EFDC"), is the local planning authority ("LPA") for its area.

2. The respondent, Somani Hotels Limited ("Somani") is the freehold owner of the Bell Hotel, High Road, Bell Common, Epping, Essex.

3. The Bell Hotel lies about 1.3km to the southwest of Epping town centre. It lies within the Metropolitan Green Belt and the Bell Common Conservation Area. There is a small group of neighbouring residential properties. The hotel is located about 0.5km from a residential care home and between 0.8km to 3.8km from 5 schools.

4. The first intervener, the Secretary of State for the Home Department ("SSHD"), is subject to duties to provide accommodation and support for asylum seekers who appear to be, or are likely to become, destitute (ss.95-98 of the Immigration and Asylum Act 1999 and the Asylum Seekers (Reception Conditions) Regulations 2005 (SI/2005 No. 7)).

5. The second intervener, Clearsprings Ready Homes Limited ("CRHL"), is one of the four companies in the UK acting as a service provider for the provision by the SSHD of premises to accommodate asylum seekers pursuant to her duties under the 1999 Act and the 2005 Regulations.

6. The Bell Hotel has been used in this way over three periods: May 2020 to March 2021, October 2022 to April 2024, and from April 2025 for a contracted period of 12 months. In January 2025 Corporate Travel Management (North) Limited ("CTM"), another service provider for the Home Office, approached Somani to discuss the use of the Bell Hotel again for the SSHD to provide contingency accommodation for asylum seekers. By a contract dated 24 March 2025 Somani agreed to provide CTM with exclusive use of the Bell for that purpose.

7. It is common ground that, for the purposes of the TCPA 1990, the lawful use of the Bell as a hotel. EFDC considers that the use of the Bell to accommodate asylum seekers represents a material change of use from that lawful use and therefore amounts to "development" requiring planning permission and, in the absence of such permission, a "breach of planning control" (ss.55, 57 and 171A of the TCPA 1990). EFDC also considers that it is necessary or expedient for it to take enforcement action against that breach of planning control. Conventionally, such action would involve the issuing and service of an enforcement notice requiring the use of the Bell to accommodate asylum seekers to cease.

8. However, EFDC has chosen instead to make an application to the High Court for an injunction under s.187B of the TCPA 1990 which provides:

> "**187B Injunctions restraining breaches of planning control.**
>
> (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised

> or are proposing to exercise any of their other powers under this Part.
>
> (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.
>
> (3) …"

9. Somani and the interveners contend that the use of the Bell Hotel to accommodate asylum seekers has not involved a material change of use from its use as a hotel and that no breach of planning control has occurred. In addition, they maintain that there is no justification for the grant of injunctive relief under s.187B. Instead, if EFDC wished to take enforcement action it should have followed the conventional route by serving an enforcement notice. That would have resulted in an appeal against the enforcement notice under s.174 of the TCPA 1990 which would have been determined by a Planning Inspector, probably after holding a public hearing and carrying out a site visit. That procedure would have enabled decisions to be made, not only on whether a breach of planning control has taken place, but also, if it has, whether planning permission should be granted for the development enforced against.

10. EFDC's Part 8 claim was issued on 11 August 2025. The relief sought was:

> (1) An injunction under s.187B of the TCPA 1990 to restrain the defendant from using the Bell Hotel as accommodation for asylum seekers, because this amounts to a material change of use in breach of planning control;
>
> (2) A declaration that the current use of the Bell Hotel does not amount to use as a hotel.

11. On the same day EFDC made an application to the court for an interim injunction prohibiting the use of the Bell Hotel for accommodating asylum seekers. The application was heard by Eyre J on 15 August 2025. EFDC and Somani appeared at the hearing. On 19 August 2025 the judge handed down his judgment granting the interim injunction sought with effect from 12 September 2025 until final judgment or further order: [2025] EWHC 2183 (KB).

12. Not long before judgment was handed down, the SSHD applied to the High Court to be joined as a party. Eyre J refused the application.

13. Somani applied for permission to appeal against the grant of the interim injunction and the SSHD applied for permission to appeal against the order refusing to join her as a party. The Court ordered that both applications be adjourned to a rolled-up hearing which took place on 28 August 2025 before Bean, Nicola Davies and Cobb LJJ.

14. On 1 September 2025 the Court of Appeal handed down judgment: [2025] EWCA Civ 1134. It granted permission to appeal to both Somani and the SSHD and allowed both appeals. The Court ordered that the SSHD be joined as a party and the interim injunction be discharged forthwith. The court also ordered EFDC to pay (1) Somani's costs of the interim injunction application both in the High Court and in the Court of Appeal and (2) the SSHD's costs of the appeal to the Court of Appeal.

15. On 3 October 2025 Mould J ordered that CRHL be joined as a second intervener.

16. The final trial of EFDC's claim was heard by Mould J on 13 to 15 October 2025. On 11 November 2025 he handed down his judgment: [2025] EWHC 2937 (KB). The judge dismissed EFDC's claim and on 25 November 2025 he ordered EFDC to pay Somani its costs of the claim and to pay £95,000 on account of those costs. The judge also ordered EFDC to pay the SSHD's costs of the claim, giving liberty to the SSHD to apply for a payment on account. On 13 January 2026 Mould J ordered EFDC to pay to the SSHD £66,000 on account of her costs. The judge refused EFDC's application for a certificate under s.12 of the Administration of Justice Act 1969 for a leapfrog appeal to the Supreme Court. He also refused permission to appeal to this court.

17. On 2 December 2025 EFDC filed a notice of appeal against the judge's order. On 22 December 2025 Holgate LJ adjourned EFDC's application for permission to appeal to an oral hearing, and so the matter came before us on 5 March 2026. We are grateful to all counsel for their written and oral submissions.

Proposed grounds of appeal

18. The first two grounds of appeal relate to the decision refusing to grant an injunction. The third and fourth grounds relate to the costs orders.

19. In summary the grounds of appeal are:

    (1) The judge failed to determine the first and central question in any application for an injunction under s.187B of the TCPA 1990, namely whether there had been a breach of planning control;

    (2) In exercising his discretion to refuse to grant an injunction under s.187B, the judge misunderstood the evidence, misstated facts and misapplied principles, such that the Court of Appeal cannot be confident that the outcome would have been the same if he had not done so. The specific particulars of this ground are addressed below;

    (3) In ordering EFDC to pay the SSHD's costs of the claim (paragraph 6 of the order), the judge wrongly treated the SSHD as having been added under CPR 19.2(2)(b) when in fact she had only sought to be added under CPR 19.2(2)(a). On this mistaken basis the judge treated the principles for the costs of an intervener as being indistinguishable from those applicable to a successful defendant. The Court of Appeal cannot be confident that the judge would have made the same costs order in favour of the First Intervener had he not made these mistakes;

    (4) In ordering EFDC to pay Somani £95,000 on account of costs, the judge:

        (a) was procedurally wrong in that he made the assessment without allowing EFDC an opportunity to make any submissions on Somani's figures; and

        (b) was wrong in law in ordering EFDC to make a payment on account in respect of sums:

(i) that were in respect of an application by Somani that the judge had dismissed and had ordered Somani to pay to EFDC;

(ii) that had already been the subject of a costs order by the Court of Appeal; and

(iii) that were in respect of VAT on Somani's solicitors' fees.

20. EFDC's skeleton sought to develop ground 1 by arguing that the judge's failure to determine whether a breach of control has occurred tainted his exercise of discretion on whether to grant the declaration requested by EFDC.

21. In EFDC's reply skeleton and in the oral submissions of Mr Philip Coppel KC on their behalf, the appellant sought to rely at the outset on matters said to satisfy the second limb of the test for the grant of permission to appeal:

> "… there is some other compelling reason for the appeal to be heard".

There is no justification in this case for that second limb to be considered first. We will follow the conventional approach of deciding whether the first limb is satisfied, namely "whether the appeal would have a real prospect of success", which depends essentially on the arguability of the grounds of appeal.

22. Before going any further, it is necessary to say something about what the appeal is and is not about. As this court said on 1 September 2025 in its judgment at [6]:

> "We are *not* concerned with the merits of Government policy in relation to the provision of accommodation for asylum seekers, in hotels or otherwise."

Such matters are for Ministers and Parliament, not the Court, even if they give rise to public concern, controversy or protest. The court is only concerned with the legal issues raised by EFDC as to whether the judge's decision is open to criticism on one or more of the grounds of appeal.

The judgment in the High Court

23. The judgment of Mould J is some 84 pages long. It set out the relevant legal principles and the evidence in some detail. It was carefully structured so that it would be clear to the reader how the judge's reasoning progressed. The parties are familiar with the judgment. We give a summary of it, to set the context for the grounds of appeal, which may then be dealt with more briefly.

24. The judge set out the relevant statutory provisions and the principles laid down in the case law at [28]-[78] and [206]. The judge paid particular attention to the leading authority on s.187B, *South Bucks District Council v Porter* (No.1) [2003] UKHL 26; [2003] 2 AC 558 in the House of Lords, including references to the judgment of Simon Brown LJ in the Court of Appeal ([2001] EWCA Civ 1549; [2002] 1 WLR 1359).

25. The judge set out the factual history at [79] to [158].

26. He noted at [80] that the Bell Hotel had been in operational decline for many years. It had ceased to be the local community hub that it had been 20 years ago. In 2008 a planning permission for a care home was obtained. Between 2017 and 2020 the hotel had been returning net losses each year. By contrast, the use of the hotel to accommodate asylum seekers had generated net profits for the hotel [94]. The judge accepted evidence from the Group Operations Director for Somani that the Bell Hotel required significant financial investment to enable it to return to use as a conventional hotel, which would be unattainable without the profits which the hotel expected to receive from the 2025-6 contract with CTM. In the longer term, the current use of the hotel is contributing towards the practical realisation of EFDC's planning policy objective that the Bell should provide visitor accommodation ([233]-[235]).

27. EFDC makes no complaint about the judge's preliminary observations at [159] to [161] which in large measure were based upon the principles in *South Bucks*. Thus, the judge accepted that under s.187B it was for EFDC to decide whether it was necessary or expedient to apply to restrain a breach of planning control by injunction. In deciding whether to grant that injunction it was not for the court to re-assess the judgment of the LPA which formed the basis for *that authority's decision to apply for the injunction* [159]. However, those factors which, on the evidence before the court, weighed with the LPA in making that judgment could properly be considered by the court in reaching its own assessment of whether the circumstances justified the grant of an injunction [160]. The degree of seriousness of the breach and its effects were also relevant factors for the court. The court could also consider the extent to which the LPA had had regard to all relevant considerations [161]. The judge explained in clear terms the difficulties the court had faced in discerning the basis upon which EFDC had decided to apply for an injunction under s.187B (see below).

28. But there was no difficulty in seeing the nature of the longstanding issue as to whether the use of the hotel to accommodate asylum seekers involved a material change of use. EFDC's consistent position from November 2022 was that it did. Somani had been "equally consistent" in saying that it did not [164]-[168].

29. The judge explained that this was not one of those straightforward cases where it is obvious that a breach of planning control has taken place, for example, in the case of operational development in the open countryside without planning permission [169]. Here, the Court of Appeal had already held that the distinction between a hotel use and a hostel use is a fine one. He discussed in some detail the case law and the overlapping considerations involved at [170] to [175]. Perfectly reasonably, the judge stated that, given the fine distinction between the two uses, he would have expected the EFDC officer with delegated authority to make the decision to apply for an injunction to identify and consider the factors pointing for and against a material change of use having taken place [182] to [183].

30. The judge recorded that the decision to apply for the injunction was taken by EFDC's Legal Services Manager, Ms Sayers, on 5 August 2025 ([179] and [189]), but she did not make a contemporaneous note of that decision or the reasoning on which it was based [179] and [189]. This is not a technical matter. As the judge rightly pointed out, it is insufficient for a LPA to take enforcement action because it considers that a breach of planning control has taken place. The authority or relevant delegatee must also be satisfied that it is necessary or expedient to take such action [188], which would involve adequate consideration of the planning considerations or merits relating to the

development to be enforced against. The scheme of delegation under which the relevant officer acted required all delegated action to be "properly documented". Given the express requirement to make such a record, the judge regarded the failure to do so as a "serious procedural error", which caused real prejudice to Somani. That prejudice was made worse by EFDC's failure to send any pre-action correspondence to Somani explaining the reasons why EFDC considered it necessary or expedient to apply to the court for an injunction [199].

31. In those circumstances, the High Court needed to understand, as far as it could from the material before it, the particular considerations on which the decision to seek an injunction had been based.

32. In her witness statement dated 29 September 2025 Ms Sayers explained her understanding that the accommodation of asylum seekers represented a change of use from a hotel "which had been open to reservation by members of the public wishing to stay in Epping, with a bar and restaurant open to all, including for functions such as weddings…". Those qualities were absent from the current use, so that the relationship between the Bell Hotel and those living and working in the area had become a "different, disengaged" one [179].

33. The judge noted Policy E4 of the Epping Forest District Local Plan 2011-2033 which supports the retention of existing visitor accommodation and venues unless it is shown that *inter alia* "investment to allow continued profitable operation of the business is not viable". The judge said that he would have expected that policy to be considered by the person deciding to seek an injunction when deciding whether that course of action was necessary or expedient. There was no such consideration [184]. We interpose to say that we find this surprising given the planning history ([see 80]) and, more particularly, EFDC's awareness that the hotel had been loss-making before the first contract to accommodate asylum seekers began ([94] and [233]-[235]).

34. In our judgment, it is highly unusual to see a LPA take enforcement action, whether by way of enforcement notice or an application for a s.187B injunction, on such an apparently flimsy basis. It therefore comes as no surprise to find the judge saying this at [185]:

> "For these reasons, I am left in considerable doubt as to whether the Legal Services Manager's delegated decision was founded upon a properly informed and considered judgment that the use of the Bell as contingency accommodation for asylum seekers constituted a breach of planning control. In the absence of a proper record of her delegated decision and in the light of the very brief explanation which she gave in evidence, I am not confident that the clear view which she felt able to reach was properly justified."

35. At [186] the judge was being generous to EFDC when he said "I am conscious of the need not to trespass too far into the forbidden territory of planning judgment". In our view, he was not in any danger of doing that at all. He was simply seeking to ascertain the basis upon which EFDC had decided to apply for a s.187B injunction, so that he could properly take into consideration the degree of harm resulting from the breach of

planning control when deciding whether it was appropriate to make the order sought by the authority, as the decision in *South Bucks* envisages.

36. One of the problems faced by EFDC is that Ms Sayers did not refer to having consulted colleagues in the planning department.

37. It is against this background that we can see that the judge acted with conspicuous fairness towards EFDC by amplifying the thin account given by Ms Sayers by reference to the evidence of Mr James Stubbs, EFDC's Planning Enforcements and Compliance Manager. It is necessary to quote [186]-[187] of the judgment in full:

> "186. Nevertheless, I am conscious of the need not to trespass too far into the forbidden territory of planning judgment. In his evidence to the court, Mr Stubbs supported the judgment that the current use of the Bell to accommodate asylum seekers differs materially from its former use as a hotel in a number of respects. Amongst the matters which Mr Stubbs relies upon in support of his view are that the Bell is currently occupied solely by a specific category of persons, namely asylum seekers. Occupiers live at the Bell for an indeterminate period of time which is governed by the progress of their asylum claim and beyond their control. The Bell is the asylum seekers' only home during that period of time. Their accommodation is block booked and paid for ultimately by the Home Office. The Bell is no longer available for use as a hotel by members of the public. Access to and from the premises is strictly controlled.
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> 187. There are obvious parallels between Mr Stubbs' analysis and the factors which were identified by Holgate J as pointing at least arguably to a material change in the use of the two hotels which were the subject matter of the Ipswich case. Mr Stubbs is an experienced and senior planning officer and his judgment should carry weight. He has been clear and consistent in his view since October 2022 that the use of the Bell exclusively as accommodation for asylum seekers is development requiring planning permission. In the light of his evidence, and notwithstanding my reservations as to the reliability of the clear view formed by the Legal Services Manager in support of her delegated decision taken on 5 August 2025, I am prepared to accept that the Claimant as local planning authority had at least a reasonable basis for alleging and asserting that the current use of the Bell as contingency accommodation for asylum seekers is in breach of planning control. I should add that I did not find the aspects of the rating history of the Bell to which my attention was drawn to be of any assistance."

38. Similarly, the judge made it clear at [283] and [295] that he assumed in EFDC's favour that the use of the Bell Hotel to accommodate asylum seekers involved a material change of use requiring planning permission. At [299] he said that for the purposes of deciding whether to grant an injunction, he had deferred to EFDC on the issue of whether a breach of planning control had occurred.

39. At [200] the judge sought again to discern why EFDC had considered it necessary or expedient to apply for a s.187B injunction. He addressed those matters at [201]-[205]. In summary, EFDC referred to "recent events". They included the criminal offences committed by three residents between 5 April 2005 and 12 August 2025, namely arson in the Bell and another hotel, four sexual offences and harassment against teenage girls in a restaurant in the town centre on 8 August 2025 and an assault on other residents in the Bell [250]. This was said to have caused local residents to fear increased criminal activity in the area, bearing in mind the location of the hotel.

40. In addition, substantial protests began on 11 July 2025, about which the judge said this at [202]-[204].

> "202. The Court of Appeal also referred to the Claimant's concerns about the incident of alleged sexual assault by a resident of the Bell on 8 July 2025, which had led to protest activity outside the Bell from 11 July onwards, the essence of those protests being that the Bell should no longer be used to house asylum seekers. Although initially a protest by local residents, later protests had grown larger and more widespread as the case gained national prominence, and there had been violence, disorder and disruption. Security fencing and gates had been erected along the highway frontage of the Bell. The Court of Appeal said –
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> *"31. It is the Council's contention that there has been harm to the amenity of the local area from the nature of the use of the Hotel and associated, sustained protests and disturbance, heightening the risk and fear of crime and resulting in occupants of the Hotel being socially excluded from the community. In addition, there is significant detriment to the amenities of nearby residential properties by reason of the noise disturbance".*
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> 203. Before the Court of Appeal, counsel for the Claimant characterised the position as being one of *"tolerating"* what had been judged to be a breach of planning control resulting from the resumption of use of the Bell to accommodate asylum seekers, without the required planning permission. However, following the protests which began outside the Bell on 11 July 2025, that which the Claimant had hitherto tolerated had become intolerable. The trigger for the application for an injunction had been the protests and the accompanying disorder and criminality: see the Court of Appeal's judgment at [106].
>
> 204. In the absence of the contemporary record of the Legal Services Manager's decision required by the Claimant's Scheme of Delegation, it is those considerations which emerge as the primary basis for the Claimant's judgment that in early August 2025 it had become necessary or expedient to apply for an injunction to restrain the use of the Bell as contingency accommodation for asylum seekers."

41. The judge dealt with the planning history of the site and the approach taken by EFDC to enforcement since the use began in 2020 ([208]-[226]). The Planning Practice Guidance of the Secretary of State for Housing, Communities and Local Government explains why proceedings for a s.187B injunction are considered to be the most serious form of enforcement action and generally a last resort [220].

42. The judge found that EFDC had been able to take enforcement action from late October 2022 [210]. It was then able to take such action again from April 2025 [212].

43. At [218] the judge referred to the potential importance of whether a breach of planning control had been flagrant, as explained in *South Bucks.* The judge's conclusions were set out at [221]-[226] ending with the finding that any breach had not been flagrant:

> "221. As things stood at the time of the Legal Services Manager's decision on 5 August 2025, this was far from being a case of last resort. On the contrary, the proposed application for an injunction was to be the first occasion on which the Claimant had resorted to formal enforcement action to regulate a use which they had long considered to be in breach of planning control, and the resumption of which they had been aware since early April 2025 at the latest. Nor was this a case in which the Claimant was contemplating enforcement action to avoid an anticipated breach of planning control which they judged as likely to cause exceptional or irremediable planning or environmental harm. On the Claimant's own case, the actual breach of planning control had taken place months earlier, with the resumption of use of the Bell to provide accommodation for asylum seekers in early April 2025.
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> 222. At [112] the Court of Appeal said –
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> *"112. We are not concerned with a case where a defendant has taken action in plain breach of planning control requiring an immediate response to prevent potentially irreparable harm. Nor is this a case where there is a history of a defendant repeatedly evading or defying enforcement proceedings…The observation of Holgate J in Ipswich that the court may be more ready to grant an injunction "where conventional enforcement measures have failed over a prolonged period", whereas the court "may be more reluctant where enforcement action has never been taken" is very much in point. Conventional enforcement measures have simply not been tried at all".*
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> 223. That remains an accurate summary of the position in the light of the evidence now before this court.
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> 224. As I have explained, the Defendant has been open and transparent in its actions and in its communications with the Claimant. It has maintained the position consistently that the temporary use of the Bell as accommodation for asylum seekers does not constitute a material change in the use of the hotel.

> Although I have concluded that the Claimant had at least a reasonable basis for alleging and asserting that the current use of the Bell as contingency accommodation for asylum seekers is in breach of planning control, it had not been thought expedient to enforce against it. That is hardly consistent with the Claimant's contention before this court that the use of the Bell for that purpose constitutes a flagrant breach of planning control. Mr Salmon had made it quite clear to Mr Stubbs that a planning application would not now be forthcoming, because there was a real dispute as to whether the current use of the Bell was development requiring planning permission. This is not a case in which the breach of planning control is clear and beyond reasonable argument.
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> 225. On the evidence, the Claimant had reached the view that use of the Bell in breach of planning control had resumed since early April 2025. Had the Claimant been of the view that the unauthorised use was causing or likely to cause unacceptable planning or environmental harm, let alone irreparable harm, it lay within its powers to take enforcement action. It chose not to do so. The characteristics of the use itself remained unchanged in any material respect between May 2025 and early August 2025. Nor is this a case where the local planning authority relies upon the unauthorised use being in contravention of a strong and locationally specific development control policy. Compare and contrast the position in Great Yarmouth Borough Council v Al-Abdin [2022] EWHC 3476 (KB) at [35] and [67].
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> 226. For these reasons, I unhesitatingly reject Mr Coppel KC's submission that in resuming the use of the Bell as contingency accommodation for asylum seekers and declining to submit a planning application for temporary use of the Bell for that purpose until March 2026, the Defendant has acted in flagrant breach of planning control."

44. Following the principles in *South Bucks* the judge dealt in detail with the harm flowing from the assumed breach of planning control at [227]-[270]. He covered *inter alia* the following:

(1) The use is carried on within existing buildings and has involved no external change to those buildings or the land [228];

(2) The security fence is detrimental to the visual qualities of the area and the character and appearance of the conservation area, but the impact is localised. It does not form an integral part of the land use but is a response to protests against that use. The fence was not needed when the use was carried on previously ([229]-[231]);

(3) Any breach of Policy E4 of the Local Plan is temporary in nature and is helping to finance a return to visitor accommodation ([232]-[235]);

(4) There was a lack of evidence to show that the use was putting increased pressure on local services and so this factor carried only very limited weight ([236]-[237]);

(5) There was a reasonable basis for local residents and the community to have fears about crime in the area based upon the arrests which had occurred. This had formed a central part of EFDC's case on harm. However, applying the principles in *West Midlands Probation Committee v Secretary of State for the Environment* (1998) 76 P & CR 589, it had not been shown that those fears arose from *the use of the land* to accommodate asylum seekers as opposed to the behaviour of certain individuals accommodated at the Bell Hotel in 2025. There had been no evidence of criminal or anti-social behaviour arising from the use to accommodate asylum seekers in 2020-2021 and 2022-2024 [238]-[255];

(6) EFDC also relied upon community tensions which were said to have resulted from the use of the hotel to accommodate asylum seekers, reflected in the protests which began on 11 July 2025. The protests were said to have had an adverse effect on the amenity of the local community and on those living at the Bell Hotel. EFDC's case before the Court of Appeal at the end of August 2025 was that the protests had been the trigger for the application for an injunction. The use of the hotel became highly controversial and attracted considerable coverage in the media nationally. Many people who joined the protests did so out of a genuine objection to the use of the hotel. That being so, it was necessary to consider the protests in the context of established principles by which objections to controversial development are addressed through the planning control process. The mere fact of opposition or support for a use does not carry significant weight in itself. Instead, the focus is on the planning and environmental factors on which those views are based. Similarly, the mere fact of public protests should not carry weight with the LPA in planning control. If it is judged that the degree of planning and environmental harm does not justify enforcement action, the fact that unauthorised development has attracted heavy and vociferous public protest objecting to its continuation should not override that judgment. Moreover, the Court of Appeal at [118] of its judgment had referred to the risk of incentivising further protest if the mere fact of protest were to be treated as material. The effects of such protest beg the question what are the proper means by which such disruption can be controlled. Planning control is not concerned to regulate protest or public order. The police have extensive powers to enforce against unlawful protest and to control appropriately lawful protest ([256]-[270]).

45. The judge addressed factors telling against the grant of an injunction at [271]-[282]. The main consideration was the ongoing need to use hotel accommodation on a temporary basis to accommodate asylum seekers and comply with the SSHD's statutory duties. The judge relied upon the evidence of Ms Becca Jones, Director of Asylum Support in the Home Office, to which there was no challenge. In September 2023 over 400 hotels were in use as "contingency accommodation" for asylum seekers. By September 2025 under 200 hotels remained in use for that purpose, of which the Bell was one. It was unreasonable for EFDC to assume that the persons accommodated at the Bell could simply be dispersed elsewhere to Crown land. If EFDC had notified the Home Office in early August 2025 of its intention to seek an injunction, it would have

been told about the continuing need to rely on hotels as an important source of accommodation, at least in the short to medium term. This need had "significant weight" in the court's decision whether to grant the injunction sought ([272]-[281]).

46. Another countervailing factor was the impact on Somani, by removing a secure source of income which could be used to fund the investment in the hotel needed to attract visitors. This carried "some weight".

47. At [283]-[294] the judge drew together the various factors in the case in order to strike a balance and to answer the question whether an injunction would be a commensurate remedy.

48. At [295]-[296] the judge said that he had reached the clear conclusion that it would not be "just and convenient" for the court to grant the injunction sought by EFDC. That remedy would not be a commensurate response. The degree of planning and environmental harm resulting from the current use of the Bell Hotel was "limited". The continuing need to use such hotels for asylum seekers was a significant counterbalancing factor. This was decidedly not a case in which there had been an abuse of planning control resulting in serious harm. That conclusion was limited to the use of s.187B of the TCPA 1990. It remained open to EFDC to consider issuing an enforcement notice.

49. Lastly, EFDC had submitted that, in the event of an injunction being refused, the court should grant a declaration that the current use of the Bell Hotel falls outside its lawful planning use as a hotel if the court considers that that would "serve a useful purpose". At [297]-[299] the judge explained why he would not grant a declaration.

Ground 1

50. Contrary to EFDC's submission, the judge did not "duck the issue" as to whether there had been a material change of use amounting to a breach of planning control. He assumed in EFDC's favour that the authority satisfied that requirement. He said at [299] that he had not found it necessary or appropriate to reach his own conclusions on that question. That was in the context of the judge considering, after he had decided to refuse to grant an injunction, whether he would nonetheless grant the declaration sought.

51. Mr Coppel KC rightly accepted that a key question when deciding whether to grant a declaration was whether that would "serve a useful purpose" (see Lord Woolf MR in *Messier-Dowty Limited v Sabena SA* [2000] 1 WLR 2040 at [41]). This was a matter for the court's discretion.

52. When asked to identify a "useful purpose" in the present case, Mr Coppel said that a decision by the court that a material change of use had occurred would make it unnecessary for that issue to be revisited in an enforcement notice appeal, should EFDC decide to serve such a notice. But in our judgment, EFDC could have pursued that course some time ago, thereby avoiding expensive litigation in the courts, and allowing the merits of a grant of planning permission to be considered in that appeal should it be decided that a breach of planning control had taken place. The service of an enforcement notice need not have involved delay relative to the timescale of the proceedings under s.187B pursued by EFDC.

53. Furthermore, a declaration from the courts in this case would not benefit LPAs in other parts of the country, contrary to EFDC's view. It is well-established that the distinction between a hotel and a hostel use is fine and depends upon the circumstances of each case, including the character of the building and surrounding area, the operation and its effects and relevant local policy considerations. The determination of such issues will depend upon the evidence and arguments in each case, although it may be more straightforward in some cases than others. Even in relation to the Bell Hotel, Mr Coppel accepted that the determination of the material change of use issue would depend on the circumstances at the date when an enforcement appeal is being considered and on the evidence put before the Inspector.

54. There is no arguable basis for criticising the judge's reasons for refusing to exercise his discretion to grant a declaration, whether as a matter of general approach or in the circumstances of this case. Parliament has allocated the function of determining whether a breach of planning control has taken place to a LPA, for example when deciding to issue an enforcement notice, and to a Planning Inspector on an appeal against that notice (see *South Bucks*). It is inappropriate to invite the court to issue a declaration which would effectively usurp those functions, *a fortiori* where there are serious concerns about the process followed by the LPA in deciding to apply for an injunction and the authority fails to make out a case for the grant of an injunction.

55. Mr Coppel also suggested that a determination by the judge that there had been a breach of planning control would involve a finding on the seriousness of the breach which would then influence the court's analysis of whether the grant of an injunction would be commensurate with the harm resulting from the breach. Mr Coppel pointed to para.109 of EFDC's skeleton argument in the High Court which set out a list of factors said to be relevant to whether a material change of use had occurred. He submitted that the judge should have made findings on each of those matters in order to decide whether a breach of planning control had taken place, the degree of seriousness and then the issue of whether the grant of an injunction would be a commensurate remedy. This approach is misconceived. It mixes up considerations which may go to whether a material change of use has occurred, a threshold issue for the incidence of planning control, and the nature and extent of the harm resulting from the breach, which goes to the question of whether it is appropriate for an injunction to be granted under s.187B, rather than the matter being dealt with by conventional enforcement tools. EFDC accepts at para.24(4) of its skeleton that the judge set out the correct legal tests in [65], [70] and [160]-[161]. It is impossible to argue that he did not apply those tests properly.

56. The proof of the pudding is in the eating. EFDC did not suggest that the judge failed to take into account in his detailed assessment of harm any matter in para.109 of the High Court skeleton which went to the earlier threshold question of whether a material change of use had occurred. As Mr Buttler KC put it for CRHL, the judge made concrete findings on harm and it has not been shown that those findings would have been in any way affected by the making of additional findings on the material change of use issue. We agree. Ground 1 is unarguable.

Ground 2

Ground 2(a)

57. EFDC complains that the judge confused its "decision to progress to a claim" (5 August 2025) with its "decision to begin the claim" (11 August 2025) with the consequence that he overlooked the planning evidence that the Council mustered between those two dates.

58. There is nothing in this point. The function of deciding whether to bring the claim for an injunction was delegated to Ms Sayers. In her oral evidence she said that she made the decision on 5 August 2025. When the decision-making was explored with her in cross-examination, there was no suggestion then (or during the rest of the trial) that she, or anyone else, took a fresh decision on 11 August informed by planning material gathered in the meantime. The "planning brief" referred to at para.31 of EFDC's skeleton was in fact instructions to counsel and predated the decision on 5 August. EFDC places emphasis on para.21 of the witness statement of Ms Sayers dated 29 September 2025 in which she says that "at each and every step" she considered whether there should be a review of the decision to apply for an injunction. But the judge quoted this passage in his judgment at [192], noting that no record of any such review had been produced [193]. Moreover, the evidence of Ms Sayers at trial was that she had reviewed whether to continue pursuing the claim after it had been issued, not before. The other witness statements to which Mr Coppel referred do not lend support to this ground or undermine the judge's criticism of EFDC.

59. Ground 2(a) is unarguable.

Ground 2(b)

60. EFDC criticises the judge for giving paramountcy to a non-planning consideration, namely the need to use hotels to accommodate asylum seekers in order to satisfy the SSHD's statutory duties. This criticism is hopeless.

61. The need to provide accommodation for persons present in this country, whether as asylum seekers or otherwise, is plainly capable of being a relevant planning consideration. The fact that Parliament has chosen to impose an obligation on the SSHD to provide accommodation for asylum seekers does not render this a non-planning matter. Indeed, it appears that EFDC did not argue otherwise in the High Court.

62. The judge decided to give significant weight to this factor. It is not said, nor could it be said, that that assessment was *Wednesbury* unreasonable. The judge gave less weight to other matters telling in favour of an injunction. No arguable criticism can be made of an outcome in which an injunction is refused, as here, because a judge considers that the factors pointing against the grant of an injunction have greater weight. We also note that the judge took into account the general interest in the need to enforce planning control, along with the planning history and whether the breach was flagrant [206].

Ground 2(c)

63. It is submitted that the judge failed to take into account concerns about community tensions resulting from the use of the hotel, not as a factor going to the merits of an application for planning permission but as a factor going to whether it was "just and convenient" to restrain the breach of planning control. But it is clear from *South Bucks* that a judge's exercise of discretion is essentially concerned with an assessment of planning and environmental harm resulting from a breach of planning control and with

the appropriateness of granting an injunction "for the purpose of restraining the breach" (s.187B(2)).

64. In any event, the judge considered the protest aspects, including the effects of protests on local citizens, very carefully and having regard to the judgment of the Court of Appeal on 1 September 2025. The assessment of such issues was a matter for the judge and is not arguably open to challenge, whether viewed in planning terms or purely as an exercise of discretion as to whether to grant an injunction. Given that the judge decided that the grant of a s.187B injunction would not be commensurate with the nature and degree of all the harm resulting from the use of the hotel to accommodate asylum seekers, it would not have been proper for him nonetheless to have granted that injunction under that statutory power in order to address "community tensions" or protests. Instead, the judge rightly referred to other powers exercisable by, for example, the police to address such concerns [270].

Ground 2(d)

65. It is submitted that the judge was wrong to say that Somani had been consistent in stating its position that the use of the Bell Hotel to accommodate asylum seekers fell within its lawful planning use as a hotel. Somani did not do so when it indicated in April 2025 that it intended to submit a planning application the following month. The short answer is that when in February 2023 Somani submitted a planning application for essentially the same purpose, it expressly stated that it was doing so without prejudice to its position that planning permission was not required [93]. There was nothing to suggest that in 2025 it had changed its position on that point. The judge was entitled to draw upon the evidence of Mr Stubbs ([163]-[168]) and of Somani. This attempt to criticise the judge's finding is hopeless.

Ground 2(e)

66. EFDC submits that the judge wrongly discounted local residents' fear of crime by relying upon the lack of statistical evidence to show that asylum seekers have a greater propensity to commit crime than others in the UK. But the judge simply said that the fact that three individuals accommodated at the Bell Hotel had committed offences over a period of about 6 months in 2025 (without any suggestion of offending during other periods when the Bell was used for asylum seekers) was not a reliable basis for attributing a propensity to criminal or anti-social behaviour to asylum seekers accommodated by the Home Office generally or at this location. No objection can be taken to that line of reasoning.

67. In any event, the judge accepted that local residents had a reasonable basis for their fear [251]. He then went on to conclude that that fear did not derive from the use of the land to accommodate asylum seekers but from the behaviour of specific individuals living there. His analysis, applying the decision in *West Midlands*, was impeccable and cannot arguably be criticised. That analysis went to the heart of the judge's conclusions on this subject.

Ground 2(f)

68. The judge did not arguably misunderstand the duration of the contract (see [177]).

Ground 2(g)

69. EFDC complains about the judge's statement that he did not find evidence on the rating history of the Bell Hotel to be of any assistance [187]. It appears that Somani's agents successfully applied to have the hotel removed from the non-domestic rating list and included in the council tax list. If this had any relevance at all, it might have gone to the dispute about whether a material change of use had taken place. But the judge assumed in EFDC's favour that there had been such a change. Thereafter, this factor had little or nothing to do with the court's assessment of planning harm or the merits of granting an injunction to address a breach of planning control. This is a further example of EFDC's failure to understand that it was a matter for the judge to decide how much weight to give to such factors, which cannot be challenged on appeal unless perverse. EFDC is simply seeking to ventilate a difference of approach in how the rating history should be considered. This is not an arguable ground of appeal.

Ground 2(h)

70. EFDC criticises the judge for ignoring the fact that its planning department had told Somani that planning permission would be required and for failing to tell that department in April 2025 that accommodation of asylum seekers in the hotel would recommence. This again is a hopeless ground of appeal. The judge set out the history of the communications between EFDC and Somani and their respective positions in considerable detail. There were no material omissions. It is apparent that the planning department was aware in April 2025 of the intention to resume the accommodation of asylum seekers and that they had repeated their view that planning permission was required [116].

71. In any event, none of this detracts from the point that there was no excuse for EFDC's failure to warn Somani of its intention to seek an injunction through normal pre-action correspondence. The Court of Appeal has already criticised EFDC's conduct ([124]-[125]).

Ground 2(i)

72. EFDC says that Somani falsely represented that it had received advice from the Home Office that the Bell was being used as a hotel, not a hostel. It is suggested that Somani's objective in making this misrepresentation was to dissuade EFDC from taking enforcement action and that this went to the issue of whether the Council had delayed in taking enforcement action and the flagrancy of the breach.

73. The judge dealt with this at [131]-[133]. It appears that, although in May 2025 EFDC disagreed with the position taken by the Home Office (which it described on 17 July 2025 as an "assertion" on which it was seeking advice – see [143]), the Council decided to monitor the situation and not to take enforcement action at that stage.

74. We agree with the Respondent that the email it sent to EFDC on 15 May 2025, which was said to have indicated that it had received planning advice from the Home Office, merely stated that it had been advised, in the sense of told, by the Home Office that its position was that no material change of use was involved. That, of course, was consistent with the approach which had been taken in the past. It was open to EFDC to

take its own advice and, in the light of that advice, to decide whether to take enforcement action, for example, in May 2025.

75. Ground 2(i) is simply another attempt to reargue the facts. It is unarguable.

Ground 2(j)

76. EFDC says that the judge's repeated reliance upon the principles in *South Bucks* overlooked the fact that that decision related to cases engaging Article 8 of the ECHR, whereas the present case does not. The implication is that the judge should have applied different principles. But EFDC has not said what those principles should be. Paragraph 75 of the Council's skeleton merely says that Somani (and CRHL) had "supercharged their profitability" through a breach of planning control. But that is merely a comment on the evidence, not a principle. Perhaps there may be cases where the evidence shows that a breach was flagrant because of a meritless profit motive. But the judge addressed flagrancy and he accepted that profits from accommodating asylum seekers would help to finance Somani's investment in the future of the Bell as a hotel. This point is unarguable.

Conclusion on ground 2

77. Ground 2 is unarguable.

Ground 3

78. The third ground of appeal is a complaint about the fact that the judge exercised his discretion to award the SSHD her costs. The SSHD successfully applied to be made a party to the appeal under CPR r.19(2)(2). Thereafter, she was separately represented.

79. In *Bolton Metropolitan District Council v Secretary of State for the Environment* [1995] 1 WLR 1176, Lord Lloyd, with whom the other members of the House of Lords agreed, stated that:

> "Where there is multiple representation, the losing party will not normally be required to pay more than one set of costs, unless the recovery of further costs is justified in the circumstances of the particular case."

He went on to stress that there were no hard and fast rules, because costs were always in the discretion of the court, but indicated that in principle a party with an interest which requires separate representation, or who raises a separate issue on which they are entitled to be heard, may be able to recover their costs.

80. It is clear from paragraph 5 of the reasons set out in his order that the judge had those principles well in mind. He found that it was "obviously and reasonably in the Home Secretary's separate interest actively to participate and to defend the claim". He also found that the SSHD had "clearly demonstrated a separate issue in this claim which justified her being separately represented and fully participating in the trial proceedings".

81. Ms Natasha Peter, for EFDC, submitted that a person who is joined to the proceedings as a party at their own request is in a different position from an original party. The

losing party will not have chosen to involve them in the litigation and would not ordinarily expect to have to pay a further set of costs. Moreover, it is not generally in accordance with the overriding objective to force a party to pay two sets of costs. Requiring the losing party to pay an "intervener's" costs as well as the winning party's costs is only justifiable where those two parties address separate issues or require separate representation: see *Bolton* (above) and *Bechtel Ltd High Speed Two (HS2) Ltd v Balfour Beatty Group Limited* [2021] EWHC 640 (TCC) at [25].

82. Here, Ms Peter submitted, the SSHD's interests largely overlapped with Somani's interests and she had intervened "just to bolster Somani's case". The SSHD did not require separate representation in order to make the points she wished about how the wider public interest impacted upon the justice and convenience of granting or refusing an injunction. Ms Peter contended that exposing a party to paying an intervener's costs in a case such as this risked opening the floodgates, and deterring cash-strapped local authorities such as EFDC from taking action to enforce planning controls because of the fear of having to bear the costs of an unknown number of persons being permitted to intervene to support a defendant. In any event, as a matter of principle, where the intervener is a public body acting to establish a position in its general interest, it should not be awarded its costs.

83. Ms Peter further submitted that the judge's decision was founded on a misconception that the SSHD had been joined as a party under CPR 19.2(2)(b) when in reality there was no "separate issue" connected to the matters in dispute in the proceedings which it was desirable to resolve by joining her. The reality was that the SSHD had been joined under CPR 19.2(2)(a).

84. In response, Mr Strachan KC, on behalf of the SSHD, stressed that different considerations apply to persons who are afforded the status of "interested parties" in a claim for judicial review, and those who can satisfy one or both of the limbs of CPR 19.2(2). The two situations should not be conflated. He submitted that the judge's reasons for making the order for costs were not tied to the SSHD's joinder having been granted under any particular limb of CPR r.19.2(2) and that EFDC's submissions that they were, depended upon a misinterpretation of paragraph 5 of those reasons.

85. As both the judge and the previous constitution of this Court which allowed the SSHD to be joined as a party recognised, the SSHD had an identifiable, separate interest, in that the injunction sought would have had an undeniable impact on her statutory duties. The SSHD was plainly best placed to speak to that impact. The evidence of that impact was relied on in detail in Mould J's judgment. When it came to determining the issue of costs, he applied the *Bolton* test with the benefit of knowing exactly what had happened at trial.

86. Mr Strachan also placed reliance on the fact that EFDC initially required two Home Office witnesses to attend for cross-examination and then abandoned that request at trial; the evidence of those witnesses, which could only have been provided by the SSHD, was read into the record without challenge. The previous constitution of the Court of Appeal had already rejected the suggestion that the evidence could have been provided by the SSHD to Somani. Mr Strachan submitted that the costs of the attendance of those witnesses should clearly be borne by EFDC.

87. In order to evaluate whether any of EFDC's complaints gives rise to a reasonably arguable basis for disturbing the exercise of judicial discretion, it is necessary to consider how and why the SSHD became a party to this appeal. We have set out the background at [12] to [14] above. When allowing the SSHD's appeal and permitting her to be joined as a party, this Court applied the interpretation of CPR r.19.2(2) in *Betta Oceanway Company of SC Tomini Trading SRL v Georgios Vatistas* [2025] EWCA Civ 595.

88. At [70] the Court of Appeal recorded that the Home Office presented the case on the basis that it was "desirable" that the SSHD be added "so that the court can resolve all the matters in dispute in the proceedings", under CPR r.19.2(2)(a). However, despite the SSHD's focus on limb (a), much of the reasoning deployed in the judgment would have justified her joinder under both limbs of that rule. The Court of Appeal held that Eyre J had failed to give CPR 19.2(2) the wide interpretation it required, and found, in terms, that the SSHD *had the right to be heard*. They were highly critical of EFDC's failure to involve the SSHD in the pre-action Protocol process. They said, at [78]:

> "It was clear that the SSHD had "legitimate" (*Betta Oceanway*) grounds for asserting that her "rights" (though, on these facts, more accurately her duties) "may be affected by the decision" in the case, and the judge was wrong to reject them."

89. The Court of Appeal then observed that Eyre J's apparent attachment of considerable weight to the SSHD's statutory duty under s.95 of the Immigration and Asylum Act 1999, and his acknowledgment of the importance of the public interest in the accommodation of destitute asylum seekers, rendered his decision not to allow the SSHD party status even more puzzling [80]. They pointed out at [81] that there were other facets of the public interest in play besides those which Eyre J had identified, including the public interest in the UK's compliance with international humanitarian and legal obligations towards asylum seekers. They expressly acknowledged that the SSHD could make a material contribution to judicial decision-making through evidence and legal argument and concluded that her joinder was "more than merely desirable, to enable the judge to determine the application from the most informed perspective."

90. In that connection, the Court of Appeal pointed out that the SSHD was in a strong position to provide evidence relevant to the "dispute" and "issues" before the court, which they said would have been ground enough on its own for her joinder [82]. They expressly rejected the contention that the SSHD could simply have fed that evidence to Somani, because "only the SSHD could speak authoritatively to the hardship which would be caused to the asylum seekers currently at the hotel in the event of temporary closure and the impact on them of rushed relocation".

91. In paragraph 5 of his reasons, Mould J specifically referred to the judgment of the Court of Appeal at [81] to [84] in the context of observing that "the Defendant was not in a position effectively to apprise the court of both the wider context of need for asylum accommodation and the background to the resumption of use of the Bell in early 2025."

92. In our judgment there is no arguable basis for interference with the judge's decision to award the SSHD her costs. Mould J applied the *Bolton* principles correctly; he was entitled to exercise his discretion in the way in which he did, for the reasons that he

gave. We are not impressed by the "floodgates" argument; nothing in this case sets any wider precedent for awarding costs to a person joined as a party under CPR 19.2(2).

Ground 4

93. Ground 4 is a complaint that the judge erred in law and acted in a procedurally unfair manner in awarding Somani a payment of £95,000 on account of their costs.

94. The judge gave directions as to submissions on consequential orders, including costs. In their submissions, which were served on 17 November 2025, Somani submitted they should be awarded their costs subject to a detailed assessment if not agreed. Somani drew attention to CPR 44.2(8) and submitted that EFDC should pay a reasonable amount on account of their costs unless there was a good reason not to do so. At that stage, they proposed an order that EFDC pay 60% of their costs on account "within 21 days of [EFDC] being served with an updated statement of [Somani's] costs."

95. In their reply submissions, EFDC referred to the fact that Somani had sought 60% of their costs on account. They pointed out that EFDC had provided a draft order which proposed that Somani should receive 50% of their costs (altogether). They complained that Somani had provided no summary of what their costs were or how they were made up, and said that without a costs schedule "EFDC has been left unable to make submissions in reply". They suggested that it was now too late for Somani to seek a payment on account.

96. The following day, 21 November 2025, which was after the deadline set for submissions, Somani served its costs schedule. EFDC complain that the schedule included costs which had already been the subject of the (previous) Court of Appeal's costs order or which related to an unsuccessful earlier application by Somani, and that there was also a claim for VAT on fees, which is not recoverable. The grand total was a little under £190,000 and the amount of VAT on solicitors' and counsel's fees in the schedule was approximately £26,534.

97. Ms Peter submitted that the judge should have invited submissions from EFDC on the costs schedule before making any order for a payment on account, and that it was procedurally unfair not to do so. Moreover, he was wrong in law to order a payment on account in respect of VAT on Somani's solicitors' fees.

98. However, the complaint of procedural unfairness rings hollow. We do not accept that EFDC was unfairly disadvantaged by the late service of the schedule, nor that the payment on account included VAT. EFDC had complained that without a schedule they were unable to make any submissions on the figures; unsurprisingly, therefore, Somani addressed that complaint. There was more than sufficient time for EFDC to make its objections known between the receipt of the costs schedule and the judge's order. In any event, if EFDC wished to have further time in which to respond they could have sought it. They did not need any express invitation from the judge to respond or to ask for further time if required. By failing to do either, they took the risk that the judge would make an order for a payment on account of costs which was something to which, in principle, the winning party was entitled.

99. The judge did not allow Somani the percentage they were claiming but awarded a figure which was approximately half what they were claiming; the other half was well in

excess of the sum claimed by way of VAT. All the other objections can be raised on detailed assessment. If it transpires on detailed assessment that the payment on account was excessive, EFDC will be entitled to a refund of the surplus. This ground has no realistic prospect of success.

Whether there is some other compelling reason for the appeal to be heard

100. EFDC has not shown any other compelling reason why permission to appeal should be granted.

101. It is said that the use of hotels to accommodate asylum seekers has been a matter of widespread public concern. But that does not address the specific question whether, despite our assessment that none of the grounds is arguable with a real prospect of success, there is nevertheless a compelling reason for the appeal against the order of Mould J to be heard and determined by this court.

102. In its skeleton argument EFDC rely upon the fact that when the opposing parties sought permission to appeal against the order of Eyre J they relied upon "other compelling reasons" based upon issues of wider importance. At paragraph 9 EFDC submits that it would be "manifestly partisan and unjust" for the Court of Appeal, having granted to Somani and SSHD permission to appeal from Eyre J on the basis of "some other compelling reason", then to refuse permission to appeal to EFDC under that same heading.

103. This was a surprising submission, to say the least. The application for permission to appeal from Eyre J was referred to the Full Court to determine at the rolled up hearing. The Court granted permission to appeal in its reserved judgment [128]. It is plain that by then the Court had decided not merely that the appeals were arguable, but that they should be allowed. The Court did not state that it was granting permission to appeal for "other compelling reasons". It had no need to do so.

104. Most of the grounds of appeal in the present case arise from the specific findings on the injunction claim or the orders for costs made by Mould J. Granting permission to appeal on such matters would not result in any useful guidance on wider legal issues as suggested by EFDC.

105. EFDC submits that clarification is needed on the principles applicable to applications for s.187B injunctions where Art.8 ECHR issues do not arise, for example, in a commercial context. However, as we have already said, EFDC has not advanced any case as to how the principles in the existing well-established case law should be altered or added to.

106. EFDC also submits that the Court should give guidance on the distinction between hotel and hostel use. There is no basis upon which the Court could properly do so. Ground 1 simply raises the issue as to whether the judge was entitled to assume the breach of planning control relied upon by EFDC rather than deciding the question of whether or not a breach of planning control had occurred. It does not raise any issue as to how the two uses should be distinguished. Here again, EFDC has not put forward any case to show that there is a need to develop the law or how that should be done. The judge referred to the principles set out in *Westminster City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 482; [2015] JPL 1276 and

Ipswich Borough Council v Fairview Hotels (Ipswich) Limited [2022] EWHC 2868 (KB); [2023] JPL 630 at [72] to [83] and [101] to [104].

107. In summary, the current legal position is that the distinction between hotel and hostel use is a fine one, and that a use as a hotel may legitimately include characteristics of a hostel, and vice versa. Accordingly, outcomes are likely to depend upon the particular facts and analysis in any given case. The decision may turn on matters of fact and degree. In the circumstances, we are not surprised that EFDC has not put forward any submissions as to how existing legal principles should be amended or developed. But this does mean that the suggestion that the present case would be a suitable vehicle for wider guidance to be given, if that is possible, has no foundation.

108. Lastly, we do not accept that there are other compelling reasons as to why the appeal relating to the order for costs of the SSHD as first intervener should be heard. The judge's reasons for deciding to award those costs turned on the circumstances which arose in this case, and the exercise of his discretion.

Conclusion

109. For these reasons we refuse the application for permission to appeal the orders of Mr Justice Mould made on 11 and 25 November 2025.