Neutral Citation Number: [2025] EWCA Civ 1134

Case No: CA-2025-002117 & 002118

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)
THE HON MR JUSTICE EYRE
KB-2025-002908

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/09/2025

Before :

LORD JUSTICE BEAN
LADY JUSTICE NICOLA DAVIES
and
LORD JUSTICE COBB

- -

Between :

SOMANI HOTELS LTD	**Appellant**
- and -	
EPPING FOREST DISTRICT COUNCIL	**Respondent**
-and-	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Intervener**

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Robin Green and **Natasha Peter** (instructed by **Sharpe Pritchard LLP**) for the **Claimant (Respondent)**
Piers Riley-Smith (instructed by **Richard Buxton Solicitors**) for the **Defendant (Appellant)**
Edward Brown KC and **Katharine Elliot** (instructed by **Government Legal Department**) for the **Intervener**

Hearing date: 28 August 2025

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Approved Judgment

This judgment was handed down remotely at 16:00 on 1 September 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Bean, Lady Justice Nicola Davies, Lord Justice Cobb:

1. This is the judgment of the court, to which we have all contributed, in respect of two linked applications for permission to appeal orders made by Eyre J ("the judge") on 19 August 2025, with the appeals to follow if permission is granted. One application is by Somani Hotels Ltd ("Somani"), the other by the Secretary of State for the Home Department ("the SSHD").

2. In proceedings issued on 11 August 2025, the claimant, Epping Forest District Council ("the Council"), applied for an injunction pursuant to section 187B of the Town and Country Planning Act 1990 ("the 1990 Act") to restrain the defendant, Somani, from using the Bell Hotel at High Road, Bell Common, Epping, Essex ("the Hotel" or "the Bell") as accommodation for asylum seekers on the basis that it amounted to a material change of use in breach of planning control.

3. We should say at the outset what this appeal hearing is not about. We are <u>not</u> concerned with the merits of Government policy in relation to the provision of accommodation for asylum seekers, in hotels or otherwise. At a hearing on 15 August 2025 before the judge, the Council sought an interim injunction requiring Somani to stop using or permitting the use of the Hotel for accommodating asylum seekers or for using the Hotel for any use other than as a hotel until the trial of the claim. An interim declaration was also sought. On 19 August 2025, before the judgment in the injunction application was handed down, the judge considered an application by the SSHD to be joined as a party in the proceedings. Following the judge's dismissal of the SSHD's application, judgment was given in respect of the Council's interim injunction application. The judge's order included the following:

> "**IT IS ORDERED THAT**:
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> 1. From 4:00pm on Friday, 12 September 2025 onwards until final judgment in this Claim or further Order of the Court, the Defendant must not at any time:
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> (a) use;
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> (b) permit to be used; or
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> (c) facilitate the use of
>
> the Bell Hotel, High Road, Bell Common, Epping, CM16 4DG (or any part thereof)
>
> (1) for accommodating asylum seekers (howsoever described), or
>
> (2) for any use other than as a hotel (within the meaning of Class C1 of Schedule 2 to the *Town and Country Planning (Use Classes) Order 1987*),
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> unless and until there is a grant of planning permission under the *Town and Country Planning Act 1990* for the use of the Bell Hotel for accommodating asylum seekers."

4. It should be emphasised that, as the wording of the order makes clear, Eyre J did not decide that the accommodating of asylum seekers at the Bell Hotel should cease permanently. He was only asked to decide, and only did decide, what should happen for the relatively short period until the trial of Epping's claim, which he fixed for the week of 13-17 October 2025.

5. The application by the Council for an interim declaration was refused.

6. Permission to appeal was refused to both Somani and to the SSHD.

Factual background

7. Somani is the owner of the Hotel which lies within the Metropolitan Green Belt Common Conservation Area. It is situated on the outskirts of the centre of Epping; opposite the Hotel is an open space known as "Bell Common". There are a number of schools in the vicinity of the Hotel, the nearest being an 11-minute walk from the Hotel. There is a residential care home within 0.3 kms of the Hotel.

8. The Council is the local planning authority for the district of Epping. Somani and the Council are agreed that the lawful planning use of the Hotel is as a hotel within Class 1 of the Town and Country Planning (Use Classes) Order 1987 ("the UCO").

9. For many years the property has been used as a hotel. It has 80 bedrooms. A sign outside describes it as having a "restaurant & bar, banqueting suite & conference rooms." The Hotel had been in decline for some years. 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. Permission was granted but the change was not implemented.

10. In March 2020, following the outbreak of the Covid-19 pandemic, the Hotel closed. Between 22 May 2020 and 4 March 2021, the Hotel was used to accommodate asylum seekers. Following the lifting of lockdown restrictions, the Hotel opened in August 2022, however occupancy and its use as a hotel was greatly reduced. Somani's evidence is that the Hotel has 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. It was loss-making in the period from 2017 to 2020 and its future as a hotel was at risk. Somani's contract with a Home Office service provider, which results in the accommodation being used by asylum seekers, provides a steady income without which the financial stability of the business would be at risk.

11. Between October 2022 and April 2024, the Hotel was used to accommodate single adult male asylum seekers. They were accommodated pursuant to the duties imposed on the SSHD under the Immigration and Asylum Act 1999 ("the 1999 Act").

12. The housing of asylum seekers at the Hotel was operated by a registered service provider on behalf of the Home Office. Between May 2020 and March 2021, the service provider was Clearsprings/Ready Homes and between October 2022 to late April 2024 it was Finefair Ltd. The period of occupation passed without incident. During these periods, the Council did not issue any enforcement notices against the use of the Hotel to house asylum seekers.

13. In November 2022, the Council learned that the Hotel was again being used to provide accommodation for asylum seekers. As a result, contact was made between an officer of the Council and a director of Somani in order to obtain updated information in respect of the use of the Hotel. Somani's director stated that the Hotel was being used to accommodate approximately 70 asylum seekers but advised that this figure could alter; the use was stated to have commenced some two weeks earlier. On 29 November 2022, a site visit by the Council's officer took place following which Somani, through its solicitors, agreed that it would submit a temporary change of use application without prejudice to its legal position that the Hotel could lawfully temporarily accommodate asylum seekers under contract with the Home Office.

14. On 14 February 2023, Somani applied to the Council for planning permission for a "Temporary Change of Use until 30 June 2024 or such earlier date as notified in writing to the Council by the Applicant from hotel use (Class C1) to use as a hostel for asylum seekers (Sui Generis)".

15. The statement accompanying the application included the following:

> "The application is made following a meeting with John Ayres, Epping Forest DC's Planning Enforcement Officer which was held on 29th November 2022. It is made without prejudice to my clients' view that the present use of the Hotel does not constitute a material change of use. The purpose of the application is to clarify the planning status of using the Bell to accommodate asylum seekers under contract with the Home Office, and to enable the Hotel to 'bridge' the current adverse economic climate and eventually resume its normal hotel operations. …..
>
> This application for a temporary 18-month planning permission is made without prejudice to Somani's view, that the current use of the Hotel to temporarily accommodate asylum seekers under contract with the Home Office does not constitute a material change of use."

16. More than a year later, in March 2024, the Council had still not determined the application (notwithstanding the requirement to do so within eight weeks, per the *Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013/2140*, art. 23(2)(ba)). On 21 March 2024, the application was withdrawn by Somani because it had become academic: the use would cease on 26 April 2024 when the Home Office contract came to an end. The Hotel closed on 26 April 2024 and did not reopen until April 2025.

17. On 18 February 2025, Somani was contacted by the Home Office and informed that the Hotel had been identified for future use as asylum accommodation. Following meetings and communications between Somani and the Home Office, Somani was informed that occupants would be expected to arrive around the end of March. On 17 March 2025, the Council sent a letter to the Home Office objecting to the use of the Hotel for asylum seekers and raising a number of concerns relating to pressures on the local homelessness, housing and health services. The letter made no reference to any

concern that the use of the Hotel would be a breach of planning control requiring permission.

18. Corporate Travel Management (North) Limited ("CTM") is a registered Home Office service provider of accommodation for asylum seekers under section 98 of the 1999 Act. By a contract dated 24 March 2025, for an initial term of 12 months ending on 24 March 2026, Somani has agreed to provide CTM with exclusive use of the Hotel for the contractual period for the purpose of short-term accommodation for asylum seekers. In its capacity as service provider, CTM provides all services connected with the welfare of asylum seekers and their social, mental and medical care. It handles all movement of residents to and from premises and has complete control over who is placed in the Hotel, the duration of their stay and all matters relating to their occupancy. Through a subcontractor, it provides premises, security and the catering of all meals. Somani provides cleaning, general facility maintenance, and hotel laundry; it facilitates personal laundry through an offsite service provider.

19. Those accommodated in the Hotel have no choice of room nor of the person with whom they share. They do not pay Somani; payment is made to Somani through the contract with CTM. The residents of the Hotel are free to "come and go" but if an individual wishes to be away for more than one day they must obtain authorisation from the Home Office. Somani 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.

20. There have been no changes to the internal structure of the Hotel since it commenced accommodating asylum seekers and the only external change has been the erection of security fencing in July 2025 by Somani which was a response to the protests which were taking place outside the Hotel.

21. Prior to the making of the contract between Somani and CTM, discussions were held between the Home Office, CTM and the Council regarding the occupancy of the Hotel by asylum seekers. The Council confirmed its agreement to a maximum of 138 residents for the Hotel. CTM took the lead in discussions with officers of the Council. Somani had no direct involvement with the Council prior to the making of the contract with CTM in March 2025: all communication was through the Home Office or CTM.

22. Since April 2025, the Hotel has reopened and has been used to accommodate single adult male asylum seekers pursuant to the contract between Somani and CTM.

23. On 8 April 2025, the Council's planning enforcement team contacted Somani and informed Somani's solicitor that it was their view that it would be necessary for Somani to seek permission for a change of use of the Hotel.

24. Somani initially suggested to the Council that a fresh temporary change of use planning application could be made. However, on 15 May 2025, Somani, having taken advice from the Home Office, informed the Council in writing that it would not be submitting a temporary application. An email dated 15 May 2025 from a director of Somani to an officer of the Council included the following:

> "I have been working on the change of use planning application since we spoke, but I have received new direction from the Home Office via CTM the contracted agent. The Home Office has advised that in the Government's opinion the hotel is contracted on exclusive use terms as a hotel, not a hostel, and so they do not support a change of use application. I understand that this matter has recently been discussed more widely with all interested parties and the Local Authority Engagement Officer (Caroline Fallows) agreed that the various asylum accommodation was contracted as exclusive use hotels, not hostels.
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> Accordingly, I have been instructed not to proceed with the change of use application. I appreciate that Local Authority Officers and indeed Councillors would welcome more information on the exclusive use hotels, and for our part we are keen to do whatever we reasonably can to reassure the local community. Therefore, if you do require further information with regards to the Bell Hotel and the Home Office asylum activities please let me know and I will do my best to share as much as I am permitted to."

25. The Council did not reply to this notification from Somani and it appears that no enforcement officer visited the Hotel to assess the current state of activities.

Events since April 2025

26. Following the use of the Hotel in April 2025, three arrests have been made by the police in respect of individuals accommodated at the Hotel. They are as follows (based upon press releases by the police save for the court proceedings in (iii)):

    (i) On 5 April 2025, a resident was arrested for an alleged offence of arson said to have been committed at the Hotel.

    (ii) On 8 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 Hotel. It is alleged that the 38-year-old male sat next to a schoolgirl and her friends, made sexual comments, touched her thigh and attempted to kiss her. The same individual was reported to have behaved inappropriately towards three or four other victims. He was charged with three counts of sexual assault, one count of inciting a girl to engage in a sexual activity and one count of harassment without violence. The hearing of these proceedings began on 26 August 2025 at the Colchester Magistrates Court.

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

27. Following the incident on 8 July, there has been protest activity outside the Hotel, the essence of the protest being that the Hotel should no longer be used to house asylum seekers. The first protest on 11 July was conducted by local residents. However, as the issue concerning the Hotel gained national prominence, the second and subsequent

gatherings were larger with the number of protesters increasing to include those who had travelled into Epping to protest. There have been marches on Epping High Street as well as counter protests. Violent and disorderly incidents connected with the protests are said to include the following: an assault on two security staff from the Hotel; a male shouting abuse outside the Hotel and drawing graffiti on its windows; and protesters using fireworks and throwing eggs. On 17 July, the protest was initially peaceful, but became disruptive subsequently some protesters threw projectiles at police officers and the Hotel, smashing police vans and vehicles and causing damage to the Hotel. Eight police officers were assaulted and suffered minor injuries. As of 3 August 2025, the police reported that 25 people had been arrested in connection with offences at these protests and 16 had been charged.

28. As a result of these protests and in order to keep them under control and reduce disruption to the wider community, Essex Police have put in place a number of measures including restrictions under section 14 of the Public Order Act 1986 namely that (1) any public assembly in the vicinity of the Hotel must take place on the south side of the B1393 High Road Epping opposite the Hotel behind the area marked off by metal fencing and (2) all protest activity must cease at 8:30pm.

29. When the previous contracts operated in the period 2020 to 2024, no continuous monitoring by the police was required; current police presence and monitoring has been necessitated by the protests commencing in July 2025. The objective of the police presence is to ensure the safety of the occupants of the Hotel, nearby residents and the wider community.

30. The protests are said to have had a detrimental effect not only on those who live in Epping but also on the asylum seekers who are resident in the Hotel, many of whom are vulnerable and/or suffering from mental health issues. The protests have an effect on local staff working in the Hotel. Increased security is now present on site and fencing and access gates have been erected around the building in order to protect the residents and staff in it.

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.

Legal proceedings

32. Following the email of 15 May 2025, Somani received no further communication from the Council's enforcement or legal team and no enforcement officers visited the Hotel. Somani was first made aware of the launch of the injunction proceedings when its non-litigation solicitor was served with unsealed papers during the afternoon of 11 August 2025. A director of Somani received a copy by email and immediately referred the matter to CTM for advice and to request them to advise the Home Office. CTM advised that they would review the matter with their in-house legal team and provide advice the following morning. Somani instructed litigation lawyers who moved at speed to instruct counsel and to prepare, at short notice, for the hearing

before the judge. On 12 August 2025, formal service of the application and relevant documents by the Council on Somani took place.

33. Somani raised with the Council a preliminary issue regarding its failure to include CTM, the service provider, as a party. CTM is contracted by the Home Office to provide accommodation to asylum seekers. The Council confirmed that it did not intend to serve CTM or seek to include them as a party. Somani contended that the difficulty this created was that while it provides the physical facility, it was CTM, on behalf of the Home Office, which booked the premises and which manages and organises the movement and stay of asylum seekers. They claimed that the absence of CTM as a party hampered Somani's ability to obtain exact details as to current levels of demand, the nature of the occupants and their length of stay, and the ramifications of the grant of an injunction to those occupants and the Home Office. In previous similar cases, the service provider had been the second defendant and provided this relevant information to the court.

The proposed intervention of the SSHD

34. The Home Office was informally sent copies by CTM of the documents relating to the Council's application on 12 August 2025. SSHD's evidence is that there was no attendance at the hearing on 15 August because of the lack of service/notice by the Council, and also because it was unclear until the application became the subject of public press reporting what the live issues would be. Further, the SSHD had been led to understand (wrongly, as it turned out) that Somani was applying for an adjournment of the hearing but this was refused. On 15 August 2025, the Home Office sought to instruct specialist counsel to represent the SSHD at the hearing but none was available. The SSHD contends that it sought to respond to the application as soon as possible given the practical constraints involved.

35. The SSHD's representatives first made contact with the court by email sent at 3:18pm on Friday 15 August; this was sent to the judge's former clerk, and as a result it was not considered by the court until after the conclusion of the hearing of the interim injunction application. A further email was sent at 12:34pm on Monday 18 August intimating that an application to be joined as a party would be made. The application was sent at 5:23pm on 18 August. On 19 August, prior to the delivery of judgment in the injunction application, the SSHD, represented by Edward Brown KC and Katharine Elliot, made the application for joinder which was refused.

The judgment of Eyre J

36. Having set out the facts at [1]-[22] of his judgment, the judge turned at [23] to the relevant legal framework. He noted that the application was for an injunction pursuant to section 187B of the 1990 Act, which so far as material provides:

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

37. The judge referred to the decision of Holgate J (as he then was) in *Ipswich BC v Fairview Hotels (Ipswich) Ltd* [2022] EWHC 2868 (KB) ("*Ipswich*"), to which we shall return. The judge noted at [25] 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." He said at [27]-[28]:

> "27. 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).
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> 28. 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:
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> > "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.""

38. The judge quoted at length from the decision of the House of Lords in *South Bucks DC v Porter* [2003] 2 AC 558. Having done so, he noted that the questions of whether there has been a change of use and whether the change was material involved matters of law and of fact. Both questions, he held, are ultimately fact-specific and call for the application of planning judgement to particular circumstances. He noted that the application before him was for an interim injunction to last until the final determination of the section 187B application and that the House of Lords had set out guidelines governing such cases in *American Cyanamid v Ethicon* [1975] AC 396 ('*American Cyanamid*'). He noted that in the *Ipswich* case, Holgate J had considered the approach to be applied in such cases where there is an issue about hotels being used to accommodate system seekers. He noted that *Ipswich* was one of three cases of the same type decided by Holgate J in November and December 2022. He cited the following passage from *Ipswich* where Holgate J said:

> "[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.
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> [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.
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> [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.
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> [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.
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> [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."

39. The judge concluded at [42] that:

> "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."

40. The next issue considered by the judge was the argument of Mr Riley-Smith for Somani that it was not necessary for the Council to seek an injunction under s.187B to stop use of the Bell because it could couple the service of an enforcement notice with a stop notice under s.183 of the 1990 Act. He held that since the Hotel was first used to accommodate asylum seekers more than four years ago, Mr Coppel KC for the Council was correct to say that it would not be open to the Council to serve a stop notice because of the provisions of s.183(5). He considered that if instead of seeking an injunction the Council were to proceed by way of issuing an enforcement notice, considerable delays would be likely and the matter "would be unlikely to be resolved until the early part of 2026 at the earliest". As to the time that court action would take, the judge said at [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."

However, the judge gave directions for the trial of the substantive injunction application to take place in the week of 13-17 October 2025.

41. The judge went on to note that it was common ground that there were two competing considerations, each of considerable weight which had to be taken into account when the court determines balance of convenience. In favour of the Council and the grant of an injunction was "the strong public interest in the enforcement of planning control". On the other hand, a factor of considerable force in favour of Somani and against the grant of interim relief is the important public policy objective of accommodating destitute asylum seekers.

42. The judge turned next to the issue of "the proper characterisation of any breach of planning control by the defendant". Mr Coppel KC had submitted that Somani's behaviour had been "surreptitious" and that the breach of planning control was "flagrant". On this the judge said:

> "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."

43. The next issue was whether the factors in favour of an injunction in the balancing exercise were to be limited to questions of planning harm. The judge said:

> "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."

44. At [70]-[74], the judge considered the relevance firstly of lawful protests and secondly of unlawful protests and activities in opposition to use of the Bell to accommodate asylum seekers. He said:

> "The Relevance of Lawful Protests about the use of The Bell.
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> 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.
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> 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."

45. The judge went on to hold that the fear of crime being committed by those accommodated in the Hotel was a relevant factor to be considered in the balance of convenience but was a factor of limited weight. Mr Riley-Smith does not quarrel with that part of the decision.

46. The judge considered next whether an interim injunction was to be refused on the grounds of delay on the part of the Council. He said:

> "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."

47. The judge noted at [93] that the normal course in considering an interim injunction application is that once a serious issue to be tried has been shown the court does not need to assess the strength or weakness of the case being put forward, nor to have regard to it in the balance of convenience. He went on to note that each party said that this was an exceptional case: the Council because its case was so strong, Somani because the Council's case was so weak. The judge held at [95] that "it is therefore necessary for me to assess the strength of the parties' respective cases". He then set out at length the factors operating against a finding that there had been a change of use and the factors supporting the finding of a change of use. He said at [101]:

> "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."

48. Similarly, on the question of whether the change of use was material, he held at [103]:

> "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."

49. Finally, the judge assessed 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 factors operating against the grant of interim relief 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."

The SSHD's application for permission to appeal, and if granted, to appeal the refusal of joinder as a party and to appeal the grant of the injunction.

Status on the appeal

50. The SSHD seeks permission to appeal to this court against the judge's refusal to join her as a party to the injunction application and permission to appeal, as an intervener, against the grant of the injunction itself.

51. Although the SSHD was refused party status in the substantive proceedings before the judge, the definition of "appellant" in CPR rule 52.1(3)(d) is wide enough ("a person who brings or seeks to bring an appeal") to include a non-party to the proceedings at first instance: see *R (George Wimpey UK Ltd) v Tewkesbury BC* [2008] EWCA Civ 12; [2008] 1 W.L.R. 1649, CA. Mr Green, while resisting the grant of permission to appeal to the SSHD on either the joinder issue or the merits, rightly did not suggest that we should refuse to allow Mr Browneven to make the applications.

Statutory duty of the SSHD

52. For an understanding of the context of the SSHD's application for party status in this case, it is important to note the range of powers and duties towards asylum seekers which she possesses; these specifically include the duty to provide "support" for asylum seekers and their dependants who appear to the SSHD to be, or to be likely to become, "destitute" within 14 days. These duties are contained within section 95 of the 1999 Act, read together with regulation 5 of the Asylum Seekers (Reception Conditions) Regulations 2005 (SI 2005 No.7). Although section 95 uses permissive language ("may provide"), in practice, once the criteria are met, the SSHD is under a public law duty to exercise the power.

53. By section 95(3) of the 1999 Act, a person is destitute if they do not have adequate accommodation; "support" in section 95 plainly includes accommodation. By section 94(1) of the 1999 Act, an asylum seeker for these purposes is someone who has made a claim that it would be contrary to the Refugee Convention or Article 3 of the European Convention on Human Rights ("ECHR") to remove them from the UK. Pursuant to section 98 of the 1999 Act, the SSHD is under a duty to provide temporary support in the form of accommodation to an asylum seeker who appears to be destitute until a decision under section 95 of the 1999 Act is taken.

Engagement of the SSHD with this application

54. It will be clear from the history outlined above that the Council and the Home Office had been in active discussions about the use of the Hotel for asylum seekers from the beginning of 2025; on 17 March 2025, the Council had sent a letter to the Home Office objecting to the use of the hotel for asylum seekers (but not as it happens on planning grounds). It was apparent from the letter from Somani to the Council on 15 May that it was not proposing to submit a new planning application, having taken advice from the Home Office. Protests outside the Hotel began in July 2025 and were the "trigger", as Mr Green described it, for the Council's decision to issue proceedings which was taken by the Council on 5 August 2025. Yet, in spite of this, the Council took no steps to notify the SSHD of the planned application for an injunction until after it had been issued. Indeed, the SSHD only learned of the application when a representative of CTM informally notified someone in her department of its existence on 12 August 2025 (i.e., the day after its issue). A copy of the unsealed, draft application for the injunction was sent by CTM to the Home Office on that day.

55. The Home Office did not attend the hearing on 15 August 2025, nor was the SSHD represented; the witness statement filed on her behalf maintains that she was unable to find "specialist counsel" to represent her at that point. The Home Office sent an email to the court (albeit to a non-operational email account) on the afternoon of 15 August 2025 explaining their interest in the application, but this was not received or read by the judge until after the conclusion of the hearing.

56. As mentioned earlier at [35] a further email was sent on behalf of the SSHD at 12:34pm on 18 August 2025 indicating her intention to apply for party status. That application was finally sent to the court at 5:23pm on 18 August 2025. The application was supported, as the rules require, by a written statement of evidence; the author of the statement was Becca Jones, Director of Asylum Support in the Home Office. The statement of Ms Jones (on behalf of the SSHD) confirms that as at 31 March 2025, there were 103,684 accommodated asylum-seekers. She further confirmed that whilst the Government's aim is to reduce the use of contingency accommodation such as hotels, hotel accommodation is currently said to be necessary at this stage in order to ensure that legal duty is met. Ms Jones added this:

> "The availability of the [Bell Hotel] is … important in enabling the Secretary of State to meet her duty to accommodate future asylum seekers going forward, in circumstances where the pressure on available properties is significant and increasing. As outlined above, small boat arrivals January to July 2025 are c.50% higher than in 2024, and our accommodated asylum-seeking population is higher than in 2024. In this context, and at this time, the loss of 152 bedspaces is significant when considering the Home Office's legal duty".

Judgment refusing permission to intervene

57. Before delivering the substantive judgment ([2025] EWHC 2183 (KB)) on 19 August, the judge gave a short oral ruling on the SSHD's application to intervene ("the party-status judgment"). This court has an unapproved note of that unpublished judgment; it runs to 17 paragraphs over 5 pages.

58. The judge opened with a short background history of the SSHD's limited engagement with the process prior to 15 August 2025. He identified the relevant provisions of CPR rule 19.2(2) (see below). He outlined the arguments of leading counsel for the SSHD, which had focused on the public interest considerations, and the SSHD's statutory duty to accommodate asylum seekers. It was recorded that Somani supported the SSHD's application but that the Council opposed it; there is little in the judgment which gives any indication as to the nature of the arguments which were raised in opposition to the application.

59. The judge characterised the principal application brought by the Council as a straightforward alleged breach of planning control ([12]-[13]). He identified Somani as the party alleged to have been in breach "… and not the SSHD". It is clear ([14]) that the judge accepted that there was a public interest argument involved in undertaking the "balance of convenience" test on the grant of an injunction and identified this as "the public interest in housing destitute asylum seekers"; he added (materially in our view) that "[t]he debate was the weight to be accorded to [the public interest in housing asylum seekers] as against other matters".

60. The judge continued:

> "[15] In light of that, the joinder of the SSHD is not necessary and the Court can resolve all matters of dispute in the proceedings. Nor is there an issue which means it would be desirable to add the SSHD. It may be that the SSHD has evidence which would assist in making an assessment of the weight to be given in this case, but the fact that the SSHD can put in evidence does not bring the SSHD into the CPR gateways. It is open to the SSHD to provide [Somani] with evidence and it is open to the [Somani] to seek such evidence."

61. Thus, having ruled that the SSHD could not satisfy the jurisdictional "gateway" test under rule 19.2(2)(a), the application for joinder failed.

62. However, the judge briefly then addressed how he would have exercised his discretion had he been in a position to do so. The final paragraph of his judgment reads as follows:

> "[17] Even if [either of the gateways in rule 19.2(2)] were met and the SSHD was able to enter through one of the gateways, I would not exercise my discretion to admit her as a party. The SSHD had sufficient time to take steps to ensure that the material which she now wishes to put before the Court was before the Court on Friday [15 August 2025]. These steps were not taken and the consequence of the SSHD being drawn in would be loss of further court time. The impact of that is significant and relevant, because this disruption of time impacts the Court and other litigants. If this matter has to be relisted for a further hearing, time for other cases would have to be diverted. This disruption is not warranted. As elegantly as the case was put, the application will be refused."

63. The SSHD sought permission from the judge to appeal his refusal of her application for intervener status. In refusing that permission, the judge said this:

> "The application to join the [SSHD] was refused because neither of the [rule] 19.2(2) gateways was passed. The issues in the case were whether there had been a breach of planning control; whether a s187B injunction should be granted; and whether interim relief should be given. It was common ground that the public interest in housing asylum seekers was an important element in the balance of convenience. The question was as to the weight to be attached to it. There was no issue between the [SSHD] and [the Council]. Alternatively even if the gateways were passed I refused to join the [SSHD] in my discretion because of inaction on her part. I was not persuaded that the [SSHD] had a real prospect of showing that my conclusion on whether she had crossed the relevant gateways was wrong in the circumstances of the case. Even if she were able to do that she would still have to show that my alternative reason namely the exercise of my discretion was wrong in light of the history of the case and the stage at which the application was made."

CPR Part 19

64. The joinder of parties in civil proceedings is governed by CPR Part 19. Rule 19.2 provides:

> "(2) The court may order a person to be added as a new party if—
>
> (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
>
> (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue."

65. This rule was most recently considered by this court in *Betta Oceanway Company & SC Tomini Trading SRL v Georgios Vatistas* [2025] EWCA Civ 595 ("*Betta Oceanway"*)*;* the judgment of Males LJ in that case draws heavily from *The Welsh Ministers v Haydn Price and The Registrar of Companies* [2017] EWCA Civ 1768, [2018] 1 WLR 738 (CA) ("*Pablo Star*"). In *Pablo Star*, Sir Terence Etherton MR had said (at [51]) that:

> "[t]he provisions of CPR 19.2(2) ought… to be given a wide interpretation. The words "in dispute" ought to be read as "in issue" That is consistent with authority that the court's powers to add a party under CPR 19.2 can exist after judgment even though, on a literal approach, there is no longer a matter in dispute: *Dunwoody Sports Marketing v Prescott* [2007] EWCA Civ 461 at [23]; [2007] 1 WLR 2343."

He added at [60]:

> "In considering whether or not it is desirable to add a new party pursuant to CPR 19.2(2) two lodestars are the policy objective of enabling parties to be heard if their rights may be affected by a decision in the case and the Overriding Objective in CPR Part 1."

66. The decision of this court in *Re Blenheim Leisure (Restaurants) Ltd* [2000] BCC 554 ("*Blenheim*") had been cited with approval in *Pablo Star*; in *Blenheim*, Tuckey LJ (at 574G) had observed that rule 19.2(2) was:

> "…drawn in wide general terms to ensure that parties whose rights may be affected by a particularrb decision have a right to be heard."

67. At [37] of *Betta Oceanway*, Males LJ drew the threads together in this way:

> "... a third party will not be joined unless it is 'desirable' that he should be. The need for this condition to be satisfied operates as a control mechanism to ensure that a third party is not permitted to gatecrash proceedings in which he has no legitimate business, where his presence would unduly complicate or add to the cost of the proceedings or

> where his presence would add nothing because the relevant issues are being contested by the existing parties."

68. In relation to the court's residual discretionary approach, Males LJ added this at [41]:

> "It is hard to envisage circumstances in which the court would conclude that it was desirable to add the new party in order to resolve all the matters in dispute, but would nevertheless decline to do so."

69. Rule 19.4 provides that the permission of the court is required to add a party once the claim form has been served, as it had in this case. That application may be made (per rule 19.4(2)(a)(ii)) by a person who "wishes to become a party", and if so must be supported by evidence (rule 19.4(2)(b)(i) ibid).

70. In this case:

    i) The Home Office presented the case for the SSHD on the basis that it was "… desirable" that she be added "so that the court can resolve all the matters in dispute in the proceedings" (CPR rule 19.2(2)(a));

    ii) The Home Office made that application itself, supported by a witness statement (rule 19.4(2)(a)(ii)).

71. It will be apparent that the rules facilitate the exercise of wide judicial discretion if the applicant can show that it can pass through one of the "gateways" in rule 19.2(2). We are of course conscious of the restricted role of the appellate court in interfering with a decision at first instance of this kind (see [44] in *Betta Oceanway*).

SSHD's Grounds of Appeal

72. The SSHD advances two grounds of appeal:

    i) She contends that the judge erred in law in refusing her application under CPR rule 19.4 to intervene in the Council's application for an injunction under section 187B of the 1990 Act. She argues that the judge failed properly to apply the first limb of the test under CPR rule 19.2(2) as to the desirability of joinder, and (as a consequence or separately) also erred in exercising his discretion to refuse joinder.

    ii) Secondly, she contends that the judge materially erred in law in deciding that the balance of convenience favoured granting the interim relief sought by the Council in respect both of: (i) the approach to the factors relevant to planning control; and (ii) the impact of the relief on the statutory duty of the SSHD to accommodate asylum seekers. The judge ought to have refused interim relief.

The arguments

73. Mr Brown argues that the judge erred in multiple respects in concluding that the SSHD could not satisfy the "gateway" provisions of rule 19.2(2), given her statutory responsibilities towards asylum seekers. He draws specific attention to the wide definition of "dispute" ("issues") discussed in *Betta Oceanway* and *Pablo Star* (see above); he argues that the judge was wrong to find that the dispute was narrowly

drawn between the Council and Somani only in respect of an "alleged planning breach" ([12] of the party-status judgment). Although the judge had accepted that there was a public interest argument in the SSHD's statutory duty to accommodate asylum seekers, and that this "is an aspect of that balance of convenience", Mr Brown argued that the judge was then wrong to say that this was not an issue between the Council and Somani. The judge's focus on the 'weight' to be attached to the public interest arguments "against other matters" ([14] of the party-status judgment) should have been enough to justify the SSHD's joinder.

74. Mr Green argues that the judge was right to dismiss the SSHD's application and that her case now is premised upon a misreading of the judgment. He argued that the judge rightly reflected the public interest arguments on both sides in the case and asserted that as issue had indeed been already joined between the Council and Somani about the weight to be attached to the same, there was no role for the SSHD. The judge, he said, was well aware of the impact on the SSHD of any injunction and had this much in his mind. Insofar as the judge had referred to the fact that it was not "necessary" for the SSHD to be joined, this was merely picking up language which Mr Brown had earlier used in argument. He drew our attention to the fact that the SSHD had not been a party to a number of previously reported judgments arising from similar injunction applications, which (he suggested) undermined her case on "desirability" in this case.

Discussion

75. We are in little doubt that the Council should have notified the SSHD of its intention to issue injunction proceedings prior to doing so, and given her the chance to consider the same in accordance with the *Practice Direction: Pre-Action Conduct and Protocol* paragraphs 3 and 6. It did not. Had it done so, the parties would have had the chance to decide "how to proceed" (para.3(b)) and consider what steps could or should be taken to achieve efficient and timely case management (para.3(e)). That said, once the Home Office was aware of the existence of the injunction proceedings, it should have taken prompt and effective steps to seek party status and/or intervene. It did not. Mr Brown on behalf of the SSHD accepts that more should have been done and quickly to achieve effective intervention in the litigation. We recognise that the judge was placed in a difficult position when presented with the application by the SSHD to intervene to make representations in a case following the hearing, and in the adjourned period while he was considering and drafting his reserved judgment. This was of course, as Mr Brown again accepted, most unsatisfactory.

76. However, in our judgment, the judge erred in refusing the SSHD intervener status in several respects, both in his evaluation of the "gateway" and in any event in the exercise of his discretion.

77. First, the judge failed to give CPR rule 19.2(2) the "wide interpretation" it required (*Pablo Star*, see above) which led to his erroneous finding that the SSHD's application did not satisfy its terms. His finding that he could "resolve all matters of dispute in the proceedings" without the engagement of the SSHD as a party (see [60] above) failed to have any or any adequate regard to the range of "issues" which would be likely to arise if the injunction were granted which directly impacted on the SSHD; these included but were not limited to the significant practical challenge of relocating

a large number of asylum seekers in a short space of time, in respect of which the SSHD uniquely had a statutory responsibility.

78. In his reserved judgment, he described the pressure on the SSHD in finding accommodation for asylum seekers:

> "[56] … 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." (emphasis added by underlining)

The judge's recognition of the SSHD's duty in this respect, and in particular his acknowledgment that the Hotel played an important part in meeting that duty ("a factor of considerable weight"), throws into serious doubt his finding in the party-status judgment that there is no "issue which means it would be desirable to add the SSHD" ([15] of the party-status judgment quoted above). 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.

79. Secondly, the judge addressed the public interest arguments in play, identifying the public interest in the SSHD's duty to accommodate asylum seekers, and the public interest in the "enforcement of planning control". He indicated that the only issue was the "weight" to be attached to the public interest in housing asylum seekers "as against other matters". In the substantive judgment, he said at [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." (emphasis added by underlining)

80. The judge's apparent attachment of "considerable weight" to the SSHD's statutory duty ([56] of the reserved judgment), and his acknowledgement of the importance of the public interest in the accommodation of destitute asylum seekers ([114] of the reserved judgment) render even more puzzling his decision then to refuse the SSHD party status. The SSHD sought to facilitate the provision of evidence and argument to expand on and illuminate these points.

81. In excluding the SSHD from this process, the judge denied himself the opportunity to take a wider look at the range of public interest arguments which could or would have been likely to be advanced to inform the "balance of convenience" test. Those arguments ranged more widely than merely "the accommodation of destitute asylum seekers" which the judge himself had identified (see extract above). The judge did not for example consider the public interest in the UK's compliance with international humanitarian and legal obligations towards asylum seekers; nor did he specifically consider the public interest (coinciding with the statutory obligation on the SSHD) to avoid destitution among asylum seekers; issues of public safety would inescapably be

caught by the wider public interest analysis, as would the impact on the local community; security of the asylum estate nationally and locally is a matter of current intense public interest, as is local and national policing; transparency and accountability of operational and strategic decision-making about where and how asylum seekers are housed is a matter of public interest, as are economic considerations both local and national. These were obviously matters in respect of which the SSHD had a pivotal constitutional role and which she could therefore materially contribute to the judicial decision-making through evidence and legal argument. The weight to be attached to, and the range of, public interest arguments rendered it more than merely "desirable" in our judgment that the SSHD be enabled to participate in the court process to enable the judge to determine the application from the most informed perspective.

82. Thirdly, and aligned with the second point, the SSHD was in a strong position to provide evidence relevant to the "dispute" and "issues" before the court at the interim and at the final hearing. The judge recognised the evidential lacuna: "it may be that the SSHD has evidence which would assist in making an assessment of the weight to be given in this case" (see again [15] from the party-status judgment). This would, in our judgment and in contrast to the position taken by the judge, have provided ground on its own for joinder of the SSHD.

83. The judge was wrong to suggest that the SSHD could or would simply feed Somani with the relevant evidence at the final hearing; Somani and the SSHD held aligned but altogether different interests. 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. In undertaking the balance of convenience, the judge had no information about where the 138 asylum seekers currently housed at the Hotel would in fact go in the interim period prior to the final hearing. The fact that the SSHD had not been a party to a number of the previously decided injunction cases (see for instance *Ipswich*) and had apparently provided evidence by witness statements to the defendants in each case, was not in itself a reason for her not to be joined into this litigation. This was all the more so since (a) there is no indication from the earlier judgments that she had ever previously sought to be so joined and (b) in this case the Council had not joined (as claimants in other cases had) the service provider (CTM in this case) as a defendant to its application. The provision of key evidence by someone outside of the litigation to someone within the litigation hardly meets the expectation of a "right to be heard" (*Pablo Star / Blenheim*).

84. Moreover, Somani had specifically asserted in its written evidence that it had taken advice from the SSHD, sometime before 15 May 2025, that it would not be necessary to submit a temporary application for "change of use"; it is surprising that this in itself did not pique judicial interest into the role of the SSHD in the central dispute about planning control, and accordingly the "desirability" of joining her into the litigation.

85. Fourthly, and quite apart from these factors, it appears that the judge primarily applied a test of "necessity" rather than "desirability" when considering the SSHD's application. He explicitly asserted that "the joinder of the SSHD is not necessary" (see [60] above), and that "the Court can resolve all matters of dispute in the proceedings" without the involvement of the SSHD. The judge's use of the word "necessary" was, in our judgment, not accidental, and did not directly refer to the

submissions of Mr Brown. He plainly had in mind that necessity may be relevant given that he explicitly and separately went on in the next sentence to discuss the "desirability" of joinder. The judge's reference to "necessity" reveals an unsound judicial approach to the determination of the criteria in the gateway which unwittingly caused him to set the bar for joinder too high.

86. Fifthly, and finally, the judge was clear that even if he had been satisfied that the SSHD could pass through the relevant gateway, he would have exercised his discretion against joining her as a party. In this regard, he was, we accept, entitled to be concerned about the delay which may be caused to the determination of the interim injunction application ("loss of further court time"). But delay was only one factor and was not a particularly significant one given that counsel had agreed that submissions could be marshalled and filed in double-quick time. No mention was made in [17] of the party-status judgment (see [62] above) of the powerful public interest arguments discussed above, nor of the duty on the SSHD to comply with her statutory obligations. These would, in our view, have been highly relevant to the exercise of discretion. We reject Mr Green's suggestion that the short "delay" likely to be caused by the determination of the application by the filing of further evidence took this case outside of the ordinary circumstances contemplated by Males LJ in *Betta Oceanway* (at [41], see above); we are clearly of the view that this is a case in which the exercise of discretion would have followed the finding of "desirability".

87. For these reasons, we grant permission to the SSHD to intervene in this appeal; permission to appeal on the joinder issue; and allow the appeal on ground one. The SSHD may accordingly be added as a party to the High Court proceedings from this point onwards. The fact that the SSHD was wrongly denied party status, and the "right to be heard" (*Pablo Star* / *Blenheim*), on this application in itself tends to undermine, at least to some degree, the judge's ultimate reasoning and decision. Against this backdrop, we turn to the applications for permission to appeal against the interim injunction.

Approach to appeals in interim injunction cases

88. We were rightly reminded of the well-known observations of the House of Lords in *Hadmor Productions v Hamilton* [1983] 1 AC 191 at [220] where Lord Diplock said:

> "An interlocutory injunction is a discretionary relief and the discretion whether or not to grant it is vested in the High Court judge by whom the application for it is heard. Upon an appeal from the judge's grant or refusal of an interlocutory injunction the function of an appellate court, whether it be the Court of Appeal or your Lordship's House, is not to exercise an independent discretion of its own. It must defer to the judge's exercise of discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based on a misunderstanding of the law or of the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately

> have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it."

89. Somani, however, submit that the judge made four errors of principle which are set out in its grounds of appeal:

    i) The judge was wrong to find that the fact that Somani had acted "deliberately" – despite also acting openly and in good faith – was a relevant factor that could support the granting of an interim injunction;

    ii) The judge was wrong in his approach to considerations of hardship as part of the balance of convenience;

    iii) The judge was wrong to find that the Council could not issue a stop notice;

    iv) The judge was wrong to find that the Council's delay was not a factor that supported refusing the interim injunction.

90. As earlier mentioned, the SSHD seeks permission to appeal on two grounds. The first is against the refusal of the judge to join her as an intervener (see above). The second and substantive ground, which overlaps to some extent with Somani's substantive grounds (i) and (ii), is that the judge erred in law in deciding that the balance of convenience favoured granting interim relief both in his approach to the factors relevant to planning control and as to the impact of the relief on the statutory duty of the SSHD to accommodate asylum seekers.

The deliberate breach issue and the judge's approach to planning law issues

Submissions for Somani

91. Mr Riley-Smith accepts that the behaviour of a defendant can be a relevant consideration in a section 187B injunction. As *South Bucks* and *Ipswich* make clear, the flagrancy and degree of the breach is relevant. However, the context for that relevance is enforcement and the risk that conventional enforcement methods would fail. This is made clear in the first *South Bucks* principle cited in *Ipswich* at [93]:

> "The need to enforce planning control in the general interest is a relevant consideration and in that context the planning history of the site may be important. The "degree and flagrancy" of the breach of planning may be critical. Where conventional

> enforcement measures have failed over a prolonged period the court may be more ready to grant an injunction. The court may be more reluctant where enforcement action has never been taken."

92. This is further illustrated in how the "flagrancy" point counted against the defendant in *Great Yarmouth* (see [67] and [76]):

> "With these conclusions in mind, I return to the Ipswich judgment at [114]. Ordinarily, the integrity of the planning system is not undermined by a local planning authority having to rely upon the normal enforcement regime, which allows an activity to continue while the merits of an appeal against an enforcement notice are under consideration. But in this case, normal enforcement action has indeed been taken and pursued to the point where the notice has come into force. Although the 2006 enforcement notice remains in force on the Villa Rose site, neither that notice nor the related criminal sanctions are proving effective to prevent a potential breach of Policy GY6."

93. However, in this case that factor was not present because the judge rightly found that Somani had acted in good faith and their actions were openly based on a genuine belief that they did not require planning permission. Therefore, there could be no concern that conventional enforcement measures would fail and – as Holgate J observed in *Great Yarmouth* – that the integrity of the planning system would be undermined by a local planning authority having to rely upon the normal enforcement regime which allows a use to continue.

94. Mr Riley-Smith submitted that the judge's criticisms of Somani for their "deliberate" decision not to apply for planning permission or a certificate of lawful development fails to recognise that there is no requirement in our planning system for landowners to establish that a use is lawful through testing the proposition by either a planning application or certificate of lawfulness. He emphasised that when Somani had previously submitted a planning application it sat with the Council for over a year without being determined – calling into question the urgent need to have consideration and scrutiny of the planning merits of the alleged breach of planning control.

95. The question (and criticism) should not be why Somani did not proactively test their case through a planning application / lawful certification knowing the Council took a different view, but instead should be why the Council did not proactively enforce against Somani knowing the company took a different view, particularly during the 3-month period from May to August 2025.

Submissions for the SSHD

96. Whether the decision is remade, or proceeds as an analysis of the judge's approach, Mr Brown for the SSHD makes several points as to why interim relief should not have been granted in this case.

97. Firstly, the arrangements for accommodation of asylum seekers are a matter of national debate as the intensive media scrutiny of the events in Epping and this injunction demonstrate. The SSHD has already stated that she does not consider the use of hotels, including the Hotel in this case, to be the most appropriate way to discharge the statutory duty, including because of the cost to the taxpayer, and that the aim is to cease all such use. However, the ceasing of such use requires a structured response by the SSHD who is charged by Parliament with the accommodation of asylum seekers via a nationwide programme.

98. Secondly:

> "It is an inescapable fact, and evidenced in Ms Jones' witness statement, that the available asylum estate is subject to incredibly high levels of demand. This injunction essentially incentivises other authorities who wish to remove asylum accommodation to move urgently to court before capacity elsewhere in the system becomes exhausted. That creates a chaotic and disorderly approach which is anathema to the concept of holding the ring and to the SSHD's Parliament-designated role as the expert decision-maker on the operation and management of the asylum accommodation estate."

99. He adds:

> "The granting of an interim injunction in the present case runs the risk of acting as an impetus for further protests, some of which may be disorderly, around other asylum accommodation. This is on the basis that the protests in Epping appear to be a material factor behind the decision now to bring this claim and not to take planning enforcement action as would normally be expected. It is unclear whether Epping has considered applying for injunctive relief against those responsible for any unlawful conduct arising from the protests. The judge had no regard to alternative mitigation of the unrest."

100. Mr Brown argues that a structured response by the Home Office will further the public interest far more than closure of in-use sites as a result of a series of ad hoc interim applications, each of which may (or may not) have some individual merit, but which ignore the obvious consequence that closure of one site means that capacity then needs to be identified elsewhere in system. The cumulative impact of such ad hoc applications is a material consideration within the balance of convenience in this case.

101. While recognising the seriousness of the allegations made against three residents at the Hotel as at the date of the hearing before Eyre J, the fact of criminal wrongdoing (and local concerns arising from criminal wrongdoing) is not a sufficient reason to require the immediate closure of asylum accommodation infrastructure housing many other individuals, including where there will be direct impacts on other areas of the accommodation estate as a result. The offences are being properly investigated and are subject to the criminal justice system. Protests appear to be appropriately managed by the responsible authorities.

102. Mr Brown further argues that the court in the context of interim relief should generally seek to hold the ring by preserving the status quo. That is well recognised as being the course least likely to result in injustice. The status quo at the time of the application was that the Hotel was operational and part of the structure for accommodating (potentially) destitute asylum seekers, which is currently under significant pressure. The court applied the opposite approach (i.e. imposing change at short notice) causing major disruption to the SSHD and the asylum seekers being accommodated at the Hotel.

103. Beyond recognising the impact on asylum seeker residents who are registered at local GP surgeries in Epping, the judge had no regard to the obvious practical problems of relocating a sizeable number of people in a short period of time, including where they would go and how that would interact with the demand for asylum accommodation caused by new asylum seekers continuing to arrive in the country as well as the impact on other areas of the accommodation estate.

104. The written skeleton argument filed on behalf of the SSHD included a submission that "the relevant public interests in play are not equal" and that one aspect of this is that the SSHD's statutory duty is a manifestation of the UK's obligations under Article 3 ECHR, which establishes non-derogable fundamental human rights. Mr Brown did not refer to this point in oral argument and we think he was right not to do so. Any argument in this context about a hierarchy of rights is in our view unattractive.

105. Mr Brown further argued that the judge was wrong to have embarked on an examination of the strength or otherwise of the parties' respective cases on the issue of whether planning permission was required. Mr Green objected to this point being raised in oral argument when it had not been made in either the Grounds of Appeal or the skeleton arguments. We upheld the objection.

The Council's response

106. In response, Mr Green says that relevant to the decision of the local planning authority in seeking an injunction pursuant to section 187B of the 1990 Act is whether such action is necessary or expedient. There is no obligation to seek an injunction or to take any enforcement action. The planning authority has a broad discretion relevant to which are the prevailing circumstances. The use of the Hotel to accommodate asylum seekers was regarded by the Council as being in breach of planning control but it tolerated the situation prior to July 2025 as there were no protests, disorder or criminality. The trigger for seeking an injunction was the July protests. What had been previously tolerated became intolerable. There was no delay as the Council was responding to a change in circumstances. Further, Somani is not prejudiced by the absence of any previous lack of enforcement action by the Council.

107. In determining where the balance of convenience fell, the judge was exercising a broad discretion to grant an injunction where it was just and convenient to do so. The judge's finding that Somani had acted deliberately is relevant to the flagrancy of the breach. In *South Bucks*, Simon Brown LJ (as he then was) at [38] identified the importance attached to enforcing planning control in the public interest and the relevance of the degree and flagrancy of the postulated breach of planning control. Somani made a decision not to apply for planning permission in May 2025; it chose to

take the risk. It was deliberately confronting the Council with a choice between accepting the position or taking enforcement action. That was a deliberate decision.

108. As to the issue of hardship, at [55]-[56] the judge dealt with the need for asylum seeker accommodation generally and as met by the Hotel. The judge sufficiently addressed this issue. If practical difficulties arose, the judge made provision for liberty to apply to the court. As to any failure on the part of the Council to consider the harm that might be caused by an injunction, the court was exercising an original and not a supervisory jurisdiction: it was for the court to reach its own view on the evidence which the judge did.

Discussion

109. We consider, with respect, that the judge made a number of errors of principle which vitiate his exercise of discretion in assessing the balance of convenience.

The deliberate breach issue

110. We accept the submissions of Mr Riley-Smith on behalf of Somani in his first ground of appeal that the judge was wrong to find that the fact that Somani had acted "deliberately" was a relevant factor supporting the grant of an interim injunction. The judge had rejected the Council's argument that Somani had acted "surreptitiously" or that the breach was flagrant. But he emphasised at numerous points in the judgment (for example in [60] cited above) that by taking the stance which it did in the letter of 15 May 2025 "the defendant was deliberately confronting the claimant with a choice" between accepting the position and taking enforcement action.

111. It is true that the 15 May letter represented a change of position by Somani, who had previously indicated that they would apply for planning permission. But they were entitled to say, having taken advice from the Home Office, that they considered that it was unnecessary to do so.

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. We do not understand the judge's finding at [85] (albeit under the heading of delay) that the Council was entitled to bring injunction proceedings as a "last resort when other means of persuasion had failed". 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.

113. The judge's criticisms of Somani for taking the stance that it was for the Council to take enforcement measures against them rather than for them to seek planning permission or a certificate of lawful development seems to us illogical as a factor in favour of an interim injunction. Suppose that the 15 May letter, having recorded that Somani had been advised by the Home Office that there was no material change of use of the Hotel and that therefore planning permission was not required, had gone on to say that "just to be on the safe side we are going to apply for a certificate of lawful

development". That application would, as Mr Green accepts, have fallen to be determined as a matter of fact and law, not of policy. It seems fanciful to suggest that the decision of the Council, following the outbreak of protests in July 2025, to ask the Home Secretary to stop the placement of asylum seekers at the Hotel, or to apply to the court for an injunction against Somani, would have been affected in any way.

114. We therefore conclude that the judge's exercise of discretion in this case was seriously flawed by his erroneous reliance on the "deliberate breach" as a significant factor in favour of the grant of an interim injunction.

The stop notice issue

115. In the light of the view we have formed on the other grounds of appeal, it is unnecessary to deal with Somani's third ground of appeal, arguing that the judge was wrong to hold that a stop notice was not available to the Council because of the statutory time bar when the alleged breach of planning control has been going on for four years. We would only add that even if the judge was wrong on this point, it seems counter-intuitive that it can be an argument against the grant of an interim injunction under section 187B of the 1990 Act that the local planning authority ought instead to have used the more draconian remedy of a stop notice. The policy arguments against such a notice being appropriate to resolve a dispute about the housing of asylum seekers might be even stronger. But these are questions to be decided in another case, should they arise for decision.

The incentivisation of protest

116. We were told by counsel for the Council that the protests operated as a "trigger" for the application for the injunction. The fact of protests outside a building is not an obvious matter which falls within planning control.

117. The judge, while noting at [71] that "considerable caution is needed before any weight is given to this factor", went on at [72] to note the Council's contention that use of the Hotel to accommodate asylum seekers was unlawful by reason of being a material change of use and that if interim relief is refused and that contention is ultimately found to be correct, the amenity of local residents will have been affected "by protest against an unlawful use in which the defendant had engaged in breach of planning control", and held that this aspect of the matter should be taken into account in favour of the grant of an injunction on the balance of convenience, albeit as a factor of limited weight. At [73]-[74], having noted that "even greater caution is needed before any weight is attached to the consequences of unlawful activity in which persons hostile to the current activity at the Bell have engaged", the judge concludes nevertheless that this too is a factor to be taken into account determining the balance of convenience "though the weight that can be attached to it is markedly limited".

118. These are, in our view, very worrying aspects of the judgment. There is force in Mr Brown's submission that if an outbreak of protests enhances the case for a planning injunction, this runs the risk of acting as an impetus or incentive for further protests, some of which may be disorderly, around asylum accommodation. At its worst, if even unlawful protests are to be treated as relevant, there is a risk of encouraging further lawlessness. The judge does not appear to have considered this risk, perhaps

because he had denied himself the advantage of hearing submissions on the merits from counsel for the SSHD.

119. Both Mr Riley-Smith and Mr Brown submit, with justification it seems to us, that the judge did not appear to consider what alternative measures to mitigate the disruption caused by protests were available. Epping do not appear to have considered such alternatives either. These could either be measures taken by the police pursuant to s 14 of the Public Order Act 1986, such as in fact occurred, or an application by the Council for an injunction against certain forms of protest.

The wider picture

120. There is also force in Mr Brown's submission that the provision of accommodation for asylum seekers pursuant to the Home Secretary's statutory duty to provide that accommodation is a national issue requiring a structured response. Mr Brown argues that a series of ad hoc interim injunction applications seeking closure of particular sites may each have some individual merit, but the judge's approach ignores the obvious consequence that closure of one site means that capacity needs to be identified elsewhere in the system. The grant of an interim injunction incentivises local planning authorities who wish to remove asylum accommodation from their area to apply to the court urgently before capacity elsewhere in the system becomes exhausted.

121. The judge, with respect, appears not to have considered this aspect of the case, again perhaps because he did not have the advantage in reaching his decision on the injunction application of evidence and submissions from the SSHD. We should record that we were not impressed by the argument on behalf of the Council that some evidence was available in the form of the statistics set out by Holgate J in the *Ipswich* case.

The status quo

122. The judge appears to have given very little weight to the desirability of preserving the status quo. Both as a matter of planning law (because an enforcement notice cannot be used to prevent an anticipated future breach) and as a matter of general *American Cyanamid* principles there is a great difference between an application to prevent a change of use which has not yet occurred and an application where the alleged breach has been going on, intermittently, for several years.

123. The desirability of preserving the status quo for a limited period before a trial is also to be taken into account when assessing the balance of the risk of doing an injustice. In this context the risk of injustice to the residents of the Bell by being dispersed by 12 September, when the trial of the claim was to take place only some six weeks later, seems to have had oddly little resonance with the judge.

Delay

124. The Council were aware by February 2025 that the Bell was once again being used to house asylum seekers. By its letter of 15 May 2025 Somani made clear that it had been advised by the Home Office that a planning application was unnecessary. The Council took no steps in response whether by issuing an enforcement notice or

otherwise. There was no threat of court proceedings - indeed no communication of any kind to Somani – until, nearly three months later, on Monday 11 August 2025, an application with 1600 pages of supporting material, supported by a detailed skeleton argument prepared by leading and junior counsel, was served on an individual employee of Somani giving 3 working days' notice (the bare minimum under the Rules for even a less weighty application) of a hearing for which 4 hours had been allocated. That application shows signs of careful preparation of a mass of material. We are told that the decision to proceed was taken on Tuesday 5 August. Certainly a letter before claim should have been sent then at the latest. We cannot agree that the judge was entitled to find that there had been no delay by the Council which weighed against the grant of urgent interim relief.

125. The tactics used on the Council's behalf were not only procedurally unfair to Somani, but ought to have reinforced the argument that the delay was a significant factor in the balance against interim relief.

126. As we have noted, Mr Green submitted forcefully that there was no relevant delay by the Council because they were entitled to change their mind in the light of the protests starting on 11 July. We have already indicated our view that the outbreak of protests should not have been regarded as a factor in favour of the grant of an interim planning injunction.

Conclusion

127. In all the circumstances we consider on these issues that the judge's approach in the balance of convenience exercise was seriously flawed in principle. The exercise of his discretion can therefore be reviewed on appeal. The Epping residents' fear of crime was properly taken into account by the judge and as in his judgment a factor in favour of the grant of an injunction; he described it as being of limited weight. Mr Brown and Mr Riley-Smith do not say it was irrelevant; nor does Mr Green say it should be decisive. We agree that it is relevant, but in our view it is clearly outweighed, in the *American Cyanamid* balancing exercise, by the undesirability of incentivising protests, by the desirability in the interests of justice of preserving the status quo for the relatively brief period leading up to the forthcoming trial, and by the range of public interest factors which we have discussed in the judgment above.

128. We therefore grant permission to appeal, both to Somani and to the SSHD, against the grant of the interim injunction, we allow the appeals and set aside the injunction. The case management directions given by the judge can remain in force subject to any amendment necessitated by the joinder of the SSHD as an intervener. We direct that submissions on costs are to be exchanged and filed by 12 noon on 1 September 2025. We end by recording our gratitude to counsel for their helpful submissions.