

Planning injunctions in high court challenges



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Overview

- S.187B TCPA 1990
- Interim injunctions in judicial reviews
- Other cases of potential interest



S.187B TCPA 1990

- Braintree DC v SSHD [2023] EWCA Civ 727
- Ipswich BC v Fairview Hotels (Ipswich) Limited [2022] EWHC 2868 (KB)
- Fenland DC v CBPRP Limited [2022] EWHC 3132 (KB)
- Great Yarmouth BC v Al-Abdin & ors [2022] EWHC 3476 (KB)
- Waverley BC v Gray & Ors [2023] EWHC 2161 (KB)
- Epping Forest DC v Halama [2023] EWHC 2906 (KB)



***Braintree DC v SSHD* [2023] EWCA Civ 727**

- C sought an injunction under s.187B to restrain the Gvt's proposed development of accommodation for asylum seekers on a former RAF Airfield
- Waksman J struck out the claim (under CPR r.3.4) as C had not received consent from the "appropriate authority" under s.296A(2) TCPA 1990
- S.296A(2): "A local planning authority must not take any step for the purposes of enforcement relating to Crown land unless it has the consent of the appropriate authority"
- S.296A(5): "A step taken for the purposes of enforcement include – (a) entering land; (b) bringing proceedings; (c) the making of an application"
- CA upheld Waksman J's decision: "an application for an injunction under s.187B is undoubtedly a "step taken for the purposes of enforcement"".



Ipswich BC v Fairview Hotels (Ipswich) Limited [2022] EWHC 2868 (KB)

- 2 claims to renew *ex parte* injunctions restraining use of two hotels (in Ipswich and in the East Riding of Yorkshire) for accommodation of asylum seekers
- Alleged breach of planning control: change of use from hotel to hostel
- Legal principles outlined by the Court (Holgate J) included:
 - (i) LPA must be satisfied not only that it is “necessary and expedient” to take enforcement action but to do so by seeking an injunction (para 88);
 - (ii) “Irreparable harm” is not a threshold test for an injunction under s.187B (para 97)
 - (iii) Use Classes Order does not operate so as to treat a change of use from within one Use Class to another use outside that Class as a material change of use (para 71).



Ipswich BC v Fairview Hotels (Ipswich) Limited [2022] EWHC 2868 (KB)

- Court considered that:
 - (i) There was a triable issue as to whether there was a breach of planning control (noting as a starting point that “the distinction between hotel and hostel use in a case of the present kind is fine”) (paras 98-104)
 - (ii) Damages would not be an adequate (indeed even available) remedy (paras 105-7);
 - (iii) Having regard to whether breaches could be said to be “flagrant” (Court considered they were not); the statutory duty on SSHD to provide accommodation for destitute asylum seekers and (iii) the Court’s finding that the councils had not shown a case of “substantial planning harm”, the factors in favour of discharging the injunctions outweighed those in favour of continuing it
- Note also the comments on steps taken (or not) to obtain a fuller picture of the proposed uses prior to commencing action, and justification for pursuing *ex parte* applications at paras 56, 62 and 66.



- Fenland DC v CBPRP Limited [2022] EWHC 3132 (KB)
- Application for an injunction restraining use of the Rose & Crown Hotel “and any other hotel in Wisbech” from being used to accommodate asylum seekers (Without notice application refused by Jay J)
- Application refused by Holgate J, for broadly similar reasons to *Ipswich* but also not accepting that the evidence demonstrated a serious level of risk to asylum seekers accommodated there
- Great Yarmouth BC v Al-Abdin & ors [2022] EWHC 3476 (KB)
- Application for an injunction restraining use of Villa Rose Hotel or any other hotel within an area protected by Policy GY6 of the Local Plan (return date hearing)
- In the “special circumstances” of that case, factors in favour of continuing the injunction “plainly outweigh” those in favour of discharging it.
- Factors in that case included an extant EN from 2006, and the absence of evidence as to why hotels outside the policy protected area would not be appropriate



Waverley BC v Gray & ors [2023] EWHC 2161 (KB)

- Injunction to restrain change of use of land to use for stationing of caravans for human occupation
- When C initially sought injunctive relief, application proceeded on the basis that land was unoccupied
- After interim injunctions were made/extended, Ds moved off the site. Some then moved back on, due to change in personal circumstances
- Court found there were “significant factors mitigating against grant of a final injunction” on the facts of the case, and that there was “scant evidence” to suggest C had “meaningfully reviewed the original decision at key points when identity of and needs of individual occupants became known”
- Court declined to grant final injunctive relief in light of C’s failures to “properly engage and grapple with” the “significant welfare issues” of the Ds



Epping Forest DC v Halama [2023] EWHC 2906 (KB)

- Claim for an injunction to restrain an extension to domestic property larger than that for which PP had been granted
- HHJ Tindal (sitting as a DHCJ) sought to provide general guidance for County Court Judges dealing with such applications
- 5 stages:
 - (i) Is there an actual or apprehended breach of planning control?
 - (ii) Was the LPA's decision to apply for the injunction unlawful on public law grounds?
 - (iii) What other enforcement steps, if any, has the LPA taken?
 - (iv) Is an injunction "necessary and expedient"?
 - (v) Is it "necessary and expedient" and "commensurate" with actual or apprehended breach to grant the injunction following the guidance in *Porter and*, if so, on what terms?



Interim injunctions in judicial review claims

- R (West Lindsey DC) v SSHD [2023] EWHC 1400 (Admin)
- Some general observations:
- *R (Doncaster Metropolitan BC) v Doncaster Sheffield Airport Limited* [2022] EWHC 3600 (Admin)
- R (Richards) v Environment Agency [2022] Env LR 14
- *R (Packham) v SST* [2020] EWHC 829 (Admin)



R (West Lindsey DC) v SSHD [2023] EWHC 1400 (Admin)

- JR challenging the decision of the SS to deploy RAF Scrampton for the purpose of housing asylum seekers
- C sought an order quashing that decision, and an injunction to restrain the movement of materials, equipment and people onto the site until the claim was determined (+ acquisition of the site by SSHD from the MOD)
- Court not convinced by merits of the case, but “would not go so far as to say the grounds raise no serious issue to be tried” (para 79) but having considered balance of convenience (including SS’s statutory duty to address the demand for accommodation for asylum seekers), the SS “has by far the better of the arguments at this stage”
- Interesting point raised as to whether s.296A TCPA 1990 if not a jurisdictional bar (as in a s.187B application) could still be a ‘discretionary bar’ for an interim injunction under CPR Part 25.



Interim relief more generally

- Expedition where interim relief sought
- *R(Doncaster MBC) v Doncaster Sheffield Airport Limited* [2022] EWHC 3060 (Admin)
at *R (Richards) v Environment Agency* [2022] Env L.R. 14
- Considering permission & interim relief together?
- *R (Packham) v SST* [2020] EWHC 829 (Admin)
- Q: where consideration is substantial, might a higher test apply? (*Mass Energy Limited v Birmingham City Council* [1994] Env LR 298)
- Importance of promptness
- *R (Doncaster MBC)* – permission not refused on grounds of delay, but would have affected scope/extent of interim relief sought



Other cases of potential interest





- Wildin v Forest of Dean DC [2023] EWCA Civ 366 (reactivation of a suspended committal order)
- Dyer v Webb [2023] EWHC 1917 (KB) (injunction sought to restrain harassment – including objections to planning applications)
- Maidstone BC v Brazil [2023] EWHC 965 (KB) (successful claim for final injunction to restrain use for residential occupation)
- South Downs National Park v Nash [2022] EWHC 3400 (KB) (unsuccessful application for an interim injunction)



Thank you

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