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IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
[2022] EWHC 3476 (KB)



No. KB-2022-004443

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 21 December 2022

Before:

MR JUSTICE HOLGATE

B E T W E E N :

GREAT YARMOUTH BOROUGH COUNCIL

Claimant

- and -

AL-ABDIN & Ors.

Defendants

MR R WALD KC and MR J THOROLD (instructed by the Legal Services Department) appeared on behalf of the Claimant.

MR M BERKIN (instructed through Direct Access) appeared on behalf of the First to Third Defendants.

MR P BROWN KC (instructed by Clyde & Co) appeared on behalf of the Fourth Defendant.

J U D G M E N T

MR JUSTICE HOLGATE:

- 1 The claimant, Great Yarmouth Borough Council ("the Council") is the local planning authority for its borough. On 23 November 2022 the Council filed a claim for an injunction under section 187B of the Town and Country Planning Act 1990 ("the 1990 Act") restraining the defendants from using or facilitating the use of the Villa Rose Hotel, 30-31 Princes Road, Great Yarmouth, or any other hotel within an area protected by Policy GY6 of the Great Yarmouth Local Plan Part 2, adopted in December 2021, as a hostel, whether for the accommodation of asylum seekers or at all.
- 2 An *ex parte* hearing, effectively without notice to the other parties, took place before Julian Knowles J in the afternoon of 23 November 2022. He granted the injunction sought until 20 December, the return date. The matter came before me on that day. The claimant undertook to file and serve an application to continue the injunction, but without any cross undertaking as to damages. That undertaking has been satisfied. Yesterday I reserved judgment and ordered that the injunction granted by the judge should continue until the delivery of this judgment.
- 3 The application is for a *quia timet* injunction to deal with an apprehended breach of planning control through the making of a material change of use without planning permission through a change from a hotel to a hostel use. The hotel has not yet begun to be used for the accommodation of asylum seekers.
- 4 There are two main issues to be considered. Applying the principles in *American Cyanamid v Ethicon (No.1)* [1975] AC 396 and in *South Bucks District Council v Porter* [2003] 2 AC 558, should the claimant be granted the injunction sought, firstly in relation to the Villa Rose Hotel and secondly, more broadly, in relation to hotels in the Policy GY6 area.
- 5 The second defendant is the registered freeholder of the hotel. The first defendant has been a director of the second defendant up until it appears very recently. Yesterday the first defendant wrote to the court to say that he had ceased to be a director. He also said that the second defendant had been sold to another company. He did not suggest that the freehold had been transferred. He produced no supporting documents in relation to the second defendant. The claimant asked for the first defendant to be removed from the claim and I made an order to that effect.
- 6 The third defendant has a five-year tenancy of the property. Mr Haseeb Aslam is the majority shareholder of the third defendant. The fourth defendant is one of three companies in the country under contract to the Home Office to organise accommodation for asylum seekers. Serco covers the Northwest, the Midlands and the East of England.

Background to the present application

- 7 On 17 November 2022 Nicola Turner, housing director of the Council, received information from the East of England Local Government Association that Serco had received an offer from the Villa Rose Hotel for it to be used to accommodate asylum seekers. Serco had then submitted this offer to the Home Office for consideration. On 18 November the Council sent letters to the hotel and to the first and third defendants informing them that the proposed use would, in their opinion, involve a breach of planning control. They sought an undertaking not to institute the use before the outcome of the final trial on 13 December 2022 of the Council's claim for a permanent injunction in similar circumstances concerning the Embassy Hotel in Great Yarmouth. In the absence of an undertaking the Council said that it would apply for an urgent injunction to restrain the use. There was no reply.

- 8 However, on 20 November at 7.59 p.m. the Home Office sent an email to the Council informing them that it had to use self-contained flats (as they were described) at the hotel on a temporary booking basis. They stated that because of the current pressure on the system for accommodating asylum seekers, they were "due to stand up these sites within 24 hours".
- 9 The Council also sent an email to Serco on 21 November at 5.50 p.m. conveying the same information as had previously been given to the first and third defendants and asking for an undertaking in similar terms.
- 10 There was no response to these communications from the Home Office or from Serco. Accordingly the Council brought its claim.
- 11 The court has considered witness statements from a number of persons. On behalf of the Council there are the second and third witness statements of David Glason, Director of Planning; witness statements of Nicola Turner, Housing Director; Ray Haslam, a licensing officer in the Environmental Health Department; the second and third witness statements of Julian Potter, the Community Marshal Manager; and a witness statement from Matt Whitton, an enforcement officer. For the third defendant there is the witness statement of Mr Haseeb Aslam. For the fourth defendant, Serco, there are the witness statements of David Barker, Housing Officer Supervisor and Tasneem Said, an in-house lawyer with the company's legal and commercial team. Mr Brown KC told the court that he no longer needed to rely upon a further witness statement from Mr Andrew Holland. I have also considered the witness statement from Mr Jonathan Kingham, litigation lead for asylum support contracts at the Home Office. There are some limited issues as between certain witness statements but it is common ground that I do not need to resolve them for the purposes of determining this application.

Background to the use of hotels to accommodate asylum seekers

- 12 The wider context for this application was set out in a recent judgment of the High Court, *Ipswich Borough Council v Fairview Hotels (Ipswich) Ltd v Serco Ltd and East Riding of Yorkshire Council v LGH Hotels Management Limited* [2022] EWHC 2868 (KB). I refer, in particular, to [2] and [21] – [29]. The judgment explains such matters as the statutory obligations on the Home Secretary under sections 95 and 98 of the Immigration and Asylum Act 1999 to provide accommodation for destitute asylum seekers, together with an explanation of the system for providing initial accommodation ("IA") and dispersal accommodation. There is no need for me to repeat that material in this judgment. The *Ipswich* decision also explains the distinction between core IA and contingency IA. Serco proposes to use the Villa Rose Hotel for contingency IA.
- 13 Following the *Ipswich* case another application for an interim injunction came before me on 24 November 2022. The judgment on that application was given in *Fenland District Council v CPPRP Ltd & Ors* [2022] EWHC 3132 (KB).
- 14 The material now before the court updates the information previously provided on the number of asylum seekers having to be accommodated by the Home Office. In the *Ipswich* case Serco was then working with 84 hotels and accommodating 11,210 asylum seekers in IA. By the time of the decision in *Fenland* those numbers had increased to 106 hotels and 12,112 people. The latest information states that Serco now works with 109 hotels and accommodates 13,204 asylum seekers in IA. In the week ending 13 November Serco had had to accommodate 520 additional asylum seekers all in IA. In the previous two weeks the comparable figures had been higher, namely 850 and 950. The court has now been told that in the week ending 4 December Serco had to accommodate an additional 493 asylum seekers into IA. The position in *Fenland* at [21] remains unchanged. According to the

Home Office over 42,600 individuals are reported to have arrived in the UK by small boats this year.

- 15 The *Ipswich* judgment notes at [29] that because Serco has an obligation to house an asylum seeker on the same day as it is instructed by the Home Office to do so, where the need for accommodation exceeds the number of rooms available in contracted sole-use hotels, the company is forced to spot-book rooms in hotels open to the public on a rolling 48 hour basis. Ms Said has explained that this is at a greater cost to the Home Office and causes disruption to asylum seekers. However, it has proved necessary because of the extreme urgency to accommodate large numbers of people under the 1999 Act.
- 16 Mr Kingham has updated the position. By the end of November 2022 there were about 105,900 people being accommodated of whom 47,100 were in short-term accommodation. The *Ipswich* decision notes that at the end of September 2022, by contrast, 99,000 asylum seekers were being accommodated of whom 38,000 were in short-term accommodation. In other words, the numbers requiring accommodation under the 1999 Act have continued to grow.
- 17 In para.25 of his witness statement, Mr Kingham explains that the recent growth in the number of destitute asylum seekers has occurred primarily during seasonal peak periods in March to September 2020 and July to December 2021, and August to the present day 2022. He says that the peaks also coincide with the emergence of migrants arriving in the UK by small boats crossing from France. In para.28 he explains the volatility in these numbers. Although they are not the only source of the increase in figures, people in small boats are a significant contributor and their numbers vary considerably from day to day. There are peak days with arrivals by small boats of over 1,000 people, or over 3,300 in a single week. These extreme peaks in the volume of people arriving by small boat creates immediate pressures on short-term processing centres such as Manston in Kent, with migrants being held longer than the expected 24 hours. This activity also contributes significantly to the extreme and urgent demand for asylum accommodation.
- 18 Mr Kingham also explains in para.32 of his statement that the obligations of the Home Office relate to other cohorts apart from asylum seekers, including persons the subject of the Afghan Relocations and Assistance policy and the related resettlement scheme. The Home Office is currently accommodating about 9,300 Afghan nationals in 67 “bridging hotels”.
- 19 Between paras.36 and 40 Mr Kingham describes recent acute demand. He says that by the end of October 2022 the increased daily level of migrants arriving by small boat had begun to exceed the capacity of Manston significantly, and the outflow from that site was being seriously constrained by a lack of onward asylum accommodation, in particular IA. The situation was made worse on 30 October by a terrorist attack at Western Jetfoil which forced the transfer of hundreds of additional migrants to Manston. By this time, the number of people accommodated at Manston had reached a peak of nearly 4,000 on a site with an intended capacity of only 1600.
- 20 In a separate incident on 4 November, the Harmondsworth Immigration Removal Centre suffered a power outage that necessitated the evacuation of that site. This required 500 recent arrivals by small boats to be immediately found asylum accommodation. By 12 November following rapid procurement of asylum accommodation spaces and an 11 day period of poor weather, all recent arrivals have been moved from the Manston site. But from 12 November to 14 November 2,225 migrants arrived by small boat and once again Manston had reached its capacity, therefore requiring further urgent onward accommodation to be secured.

21 To address these exceptional circumstances and to alleviate the risk of potentially inadequate conditions, the Home Office took the decision to increase urgently the procurement of contingency IA through the use of short-term emergency "spot-booked" hotels. Mr Kingham explains in para.48 that in contrast to the procedures for "business-as-usual" contingency hotels, the processes associated with short-term emergency spot-booking have been truncated, and the opportunity for advanced engagement with local communities reduced.

Serco's involvement at Great Yarmouth

22 Ms Said explains, at para.36, that in the last six months Reed & Mackay, a travel agency used by Serco to source potential hotels, has proposed nine hotels in Great Yarmouth, one of which was the Villa Rose. The Embassy Hotel, Victoria Hotel and Comfort Hotel were proposed by Serco to the Home Office for approval as long ago as 23 June. On 28 June, the Home Office communicated its decision to approve only the Victoria Hotel, noting that Great Yarmouth "is a coastal town so may not get this past ministers, but this is the largest so have approved it". "The largest" referred to the Victoria Hotel.

23 The Victoria Hotel has been referred to in these proceedings because it illustrates the way in which hotel accommodation of this kind is used and, it is common ground, the way in which the Villa Rose Hotel would be used. The Victoria Hotel has 45 rooms with a maximum occupancy of 69 people. The hotel provides three set menu meals a day to the asylum seekers. There have been no physical alterations to the hotel, and none are proposed. The hotel's own staff operate reception, clean the rooms, provide a laundry service and cook the meals. At the beginning of December 2022 there were 64 asylum seekers in the hotel, all single adult males of various nationalities. There are no more than two people sharing a room. The court was told that there is some sharing by people who do not know each other. Asylum seekers can come and go as they please, but if absent for more than 72 hours they are required to report to a housing officer. There is therefore a degree of control over the movements of the occupants. Two of the hotel rooms have had beds removed so that they may be used as a medical triage room and as an office for Serco employees, doubling up from time to time as a legal consultation room for an asylum seeker needing legal advice.

24 Serco provides security personnel for the protection of the occupants of the premises. It is common ground that similar arrangements would be implemented at the Villa Rose Hotel if it were to be used to accommodate asylum seekers.

Planning considerations

25 The Council places a great deal of emphasis on policies in its statutory development plan. The statutory development plan includes the Core Strategy and the Local Plan Part II. Mr Glason points out that the Local Plan contains a strategy similar to that which has existed for many years in earlier development plan documents for protecting and enhancing an area formally designated as "the sea front" at Great Yarmouth. There has been and is a long-term strategy to protect and enhance tourism and the facilities for tourism in that location.

Policy GY6

26 I will give a brief summary of Policy GY6. It is headed "Great Yarmouth Seafront Area". This area is shown on the proposals map for the Local Plan. It runs broadly north/south. It includes property facing on to the sea and also sections of side streets lying immediately behind that frontage. The Seafront Area includes the Villa Rose, but not the Victoria Hotel.

27 Within the sea front area:-

"... the Council principally aims to:

- (a) encourage year-round, sustainable tourism;
- (b) encourage investment in major new tourism, leisure and entertainment facilities;
- (c) resist the loss of key tourism uses to non-tourism uses;
- (d) conserve the seafront's heritage assets and bring them back into viable, active use where possible; ..."

28 A number of specific uses are identified as being appropriate within the sea front area, including, firstly, hotels. The last paragraph of the policy states:

"Residential accommodation which is not self-contained, and other forms such as houses of multiple occupation, hostels and similar uses, will not be permitted within the Seafront Area."

29 There then follows a lengthy policy justification for Policy GY6. Paragraph 3.42 reads:

"Great Yarmouth's Seafront Area provides the main focus for holidaymakers with the greatest concentration of tourist attractions and range of other related tourism and entertainment uses. It is therefore strategically important to the Borough's economy. "

30 In para.3.44 the Council states that maintaining and encouraging new, vibrant and visually active uses along the seafront is fundamental for the continued vitality of the Borough's tourism, leisure and cultural offer. This helps to "provide interest and 'pull' along the extent of its area" and to encourage a variety of visitors, expenditure and footfall throughout the year.

31 Paragraph 3.46 explains how the Council will resist the loss of tourism uses.

32 Paragraph 3.47 deals with heritage assets, pointing out that the Seafront Area contains many nationally recognised listed buildings, including the Britannia and Wellington Piers, the Hippodrome and the Winter Gardens. It also lies mostly in or adjacent to a number of conservation areas, including the Seafront Conservation Area. The quality and condition of these heritage assets is currently of some concern. Accordingly the local plan refers to the need to ensure that all development proposals complement and enhance the historic fabric of the Seafront Area.

33 The Villa Rose lies towards the centre of the Great Yarmouth Seafront Area in a conservation area and not far from the Britannia Pier and other important attractions. As Mr Wald KC explained, footfall is important for the economic vitality of the seafront. It also generates income which helps to pay for maintaining the fabric of the conservation area and other heritage assets.

34 Policy GY6 was expressly considered by the independent inspector appointed to conduct the statutory examination of the local plan. In para.102 of his report, the Inspector stated that he had recommended one of a number of "main modifications" under s. 20(7C) and s. 23(2) of the Planning and Compulsory Purchase Act 2004 in order to make the plan "sound" and therefore legally capable of being adopted. This was intended to provide certainty that

residential accommodation and other uses including hostels were not being permitted within the Seafront Area.

- 35 In my judgment, GY6 is a highly specific, protective policy directed to a large and highly important sector of the Borough's economy. Mr Glason provides helpful context for the policy. In 2019 the annual value of tourism to Great Yarmouth was around £648 million, supporting around 9,600 full-time tourism jobs and 13,000 tourism-related jobs, representing 37 per cent of total employment within the Borough. A recent economic report indicates that accommodation and food services is likely to be the second largest growth sector in the Borough after government services.
- 36 During the pandemic footfall in the town centre over the Christmas period fell to below 50,000 monthly visitors, whereas before the pandemic the comparable figure was above 100,000 people. Mr Glason says that Great Yarmouth is heavily dependent upon increased footfall, and this is important, for example, during the Christmas period. But this consideration is not confined to that period. He states that consolidating and building a year-round visitor economy is a consistent policy objective, both at local and regional level.
- 37 Policy CS8 of the Core Strategy records that Great Yarmouth is one of the top coastal tourist destinations in the UK. The success of its tourism benefits not only the local economy but also the wider sub-regional economy.
- 38 Unfortunately, however, the Borough also suffers from multiple deprivation. The Borough as a whole has an average rank of being the 24th most deprived district in the country. In that context, the claimant is concerned that the removal of tourist accommodation and the subsequent reduction in tourism revenue will negatively impact the efforts being made to address this problem.
- 39 Because of the effect that the pandemic has had on the local economy, the Council has decided to take direct action to support the tourism economy by allocating £1 million of funding to maintain an all-year round visitor offer. The court has been informed in the present case that the average duration of stay for an asylum seeker in IA has increased from around 21 days to 158 days, that is to say about six months. It is common ground that such persons receive only a small amount of financial assistance and so would not make any significant contribution to the economy of the town, unlike tourists.

Enforcement action

- 40 On 7 June 2006 the Council issued an enforcement notice in respect of a breach of planning control at the Villa Rose Hotel, namely a change of use from the hotel to use as a house in multiple occupation, contrary to the then development plan policies. The reason for issuing the notice was said to be an unauthorised material change of use from hotel, not to HMO, but to the *sui generis* use of hostel. The notice imposed requirements in order to remedy the breach of planning control, namely to cease using the land as a hostel. It does not appear that an appeal was brought or, if brought, that any appeal achieved any substantive success or any alteration or improvement in the drafting of the notice. Mr Brown, on behalf of Serco, accepted that the enforcement notice remains in force.
- 41 Mr Berkin asserted on behalf of the third defendant that the notice had ceased to be effective, referring to section 171B, in particular subsection (3) of the 1990 Act. That refers to a 10 year immunity period which relates to the taking of enforcement action. Here the enforcement notice came into force. Section 171B(3) does not provide that a notice served inside that 10 year period only subsists for 10 years. Moreover, section 181(1) states that compliance with an enforcement notice, including discontinuance of any use of land shall

not discharge the notice. Subsection (2) provides that any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it be discontinued permanently to the extent that it is in contravention of Part III of the 1990 Act. Parliament has also spelled out that the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice. So, with respect, Mr Berkin's contention is simply untenable.

- 42 Section 179 deals with offences in relation to non-compliance with enforcement notices. It plainly applies to a requirement in this instance to cease the use of premises as a hostel.
- 43 Section 285(1) is an ouster clause which prohibits the validity of an enforcement notice being questioned, save by way of an appeal under Part VII of the 1990 Act, in any proceedings whatsoever on any of the grounds on which such an appeal may be brought. So, for example, any ground relating to the drafting of the notice and the apparent inconsistency between the specified breach of planning control and remaining parts of the notice would have been a matter to raise in an appeal against the enforcement notice.
- 44 Mr Brown was inclined to accept that analysis save only that he raised the possibility that it might be arguable that this notice was a nullity. I need say no more about that because he very fairly accepted for the purposes of the decision on the application to continue the interim injunction that the court should proceed on the basis that firstly, the enforcement notice is extant and secondly, that the use of the Villa Rose as a hostel would be a criminal offence under the 1990 Act. As I say, he reserves the right to argue otherwise if this matter should proceed to a final trial.
- 45 If the Crown Court passes sentence for an offence under s.179 of the 1990 Act an unlimited fine may be imposed. There is no power, however, to impose a term of imprisonment or to order the sequestration of assets, as may occur in an application for committal for contempt.
- 46 Mr Wald submits that an injunction under section 187B is justified in this case partly in aid of the criminal law. The enforcement notice, he says, shows no sign of deterring the use of the Villa Rose Hotel to accommodate asylum seekers, in circumstances where the defendants accept that there is a serious issue to be tried as to whether a breach of planning control would be involved. I also note briefly that the Council has taken enforcement action elsewhere in the Borough in support of its tourism policies. For example, there was an appeal decision in 2000 on another hotel building.

Legal principles

- 47 The judgment in the *Ipswich* case set out at [68] – [97] and [110] – [115] legal principles on material change of use as a breach of development control; the difference between hotel and hostel uses; the powers available to a local planning authority for taking enforcement action; the principles governing the grant of an injunction under section 107B; and the legal approach to the balance of convenience. No issue is taken by the parties in this case with that analysis and it is unnecessary for me to set out that material in this judgment.

Serious issue to be tried

- 48 I turn to apply the principles in *American Cyanamid*. The defendants accept that there is a serious triable issue as to whether a breach of planning control would take place were the Villa Rose Hotel to be used for the accommodation of asylum seekers, that is a change of use from hotel to hostel amounting to a material change of use. However, they will maintain at any final trial that no breach of planning control would be involved.

- 49 Planning considerations are to do with the character of the use of land. It is common ground that the policies of the development plan may be relevant to that issue. See, for example, *Wilson v West Sussex County Council* [1963] 2 QB 764, 785. In my judgment Policy GY6 is certainly relevant. It is aimed at protecting a substantial part of the local economy of the borough dependent on tourism. That, in turn, is said to depend upon a collection of tourist facilities, including hotel accommodation.
- 50 The Villa Rose is in the protected Seafront Area. On my reading of the Local Plan, this is a highly specific and particularly important area for tourism and the Plan's policies on tourism. It is also plain that the objectives for the tourism economy include the extension of the tourist season.
- 51 In this context I note that the defendants have not said that we are here dealing with only 1 hotel out of the 25 in the GY6 area. They were right not to advance that submission. That argument becomes all too easy to replicate and then it becomes very difficult to draw and apply a coherent line.
- 52 The claimant acknowledges that the starting point for considering whether there would be a breach of planning control in this case is that generally the distinction between hotel and hostel use is fine (*Ipswich* at [78] and [101]).
- 53 There are some factors pointing against a hostel use. Proposed use would involve no alteration of the premises and in many ways the operation of the premises would be similar to that carried out ordinarily by hotel operators. There would be no dormitories and it is not suggested the accommodation is basic or inexpensive.
- 54 On the other hand, there are factors pointing to a hostel use. In this case, unlike others, the Council is aware of how the premises would be used. In part this is based upon their experience of the use of the Victoria Hotel. The premises would be block-booked for a substantial period of time, solely for occupation by people belonging to one cohort, asylum seekers, having nowhere else to live. In addition, as Mr Glason points out, there would be a degree of management of movement of the residents. They are not supposed to be absent for more than three days. The duration of their transient occupation would be determined by their move to the next stage of the asylum process. The accommodation would be paid for ultimately by the Home Office. As I have said, the location of the hotel within the Seafront Area in Policy GY6 is important. The claimant may rely upon that policy as a factor indicating that there would be a breach of planning control.
- 55 I have already referred to the increase in the 21-day average stay to something of the order of 26 weeks. There is no suggestion that that period is likely to decrease. The hotel would be closed to public bookings both as regards accommodation and the restaurant. There would be little or no expenditure by asylum seekers in the town. It strikes me that that is a highly relevant factor. They would not contribute to the local economy. Policy GY6 resists hostel use for what have been judged to be sound planning and economic reasons. This is a policy which is highly specific. It does not, for example, cover the whole of the borough or the whole of the town. Instead, it is targeted at the most important part of the town for tourism. It applies to a carefully defined strip of land closely related to the major tourist attractions.
- 56 At the end of the day whether a material change of use would occur is a question of fact and degree, but in my judgment the particular policy considerations raised in this case by Policy GY6 strengthen the Council's case on breach of planning control significantly.

Damages

57 Turning to the next subject in *American Cyanamid*, it is agreed that damages would be an inadequate remedy for the claimant. But the Council does not offer a cross-undertaking as to damages, applying the principles stated in *Kirklees Metropolitan Borough Council v Wickes Building Supplies Ltd* [1993] AC 227. That position is accepted by the defendants. At this stage they have not put forward any quantification of loss that might result from the grant of an interim injunction. However, I acknowledge that that does not mean to say that a loss might not be demonstrated at any final trial.

Balance of convenience

58 All parties agree that in these circumstances the decision on whether an injunction should be continued depends upon the balance of convenience. The claimant says that the proposed use of the hotel would represent a serious and flagrant breach of planning control. They also say that there is a strong public interest in enforcement action being taken against such breaches.

59 The starting point is the judgment in the *Ipswich* case at [110] – [111]. A key question appears in the last sentence of [111]:

"Would the immediate restraint of the proposed use by injunction, rather than the use of other enforcement action, be 'commensurate' with that harm?"

60 The degree of seriousness of the harm relied upon by the Council is an important consideration. The Council accepts that in each case the proposed use would not cause any environmental damage, or any harm to the amenity of neighbouring uses, or any physical harm to the character and appearance of the area. The buildings would not be altered. There would be no issues relating to traffic generation or highways.

61 If the injunction is not continued, 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. In that sense there would not be any irreparable physical damage, but a further consideration is how serious would be the harm between now and the trial if the injunction were not to be continued.

62 In the *Ipswich* judgment at [122] the court did not attach any weight to the claimant's submission that it would be more harmful to asylum seekers if they had to be relocated after a final trial rather than prevented from arriving at the hotels in the first place. That was in the context where at that stage they were only expected to remain in the IA contingency hotels for a relatively short period, even if that period was somewhat greater than the normal duration of 21 days. In other words, the occupants would be moving on in any event after a relatively short period of time.

63 The situation is different in this case. The court is told that the average likely duration of occupation is around 26 weeks. It follows that if a permanent injunction were to be granted where there had been no interim injunction there would indeed be disruption to the individuals concerned. This is a factor weighing in favour of the grant of an interim injunction (see [93(iii)] of the *Ipswich* judgment referring to *South Bucks*).

64 As against that, the position remains that as in the *Fenland* case at [61], the need for contingency IA has continued to grow. There is certainly nothing to suggest that it has reduced. This factor, which is related to the statutory duties under sections 95 and 98 of the 1999 Act, continues to attract substantial weight.

65 In the *Ipswich* judgment at [93(i)] the court said this:

"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."

66 The issue of flagrancy in the circumstances of the *Ipswich* and *East Riding* cases was dealt with in the judgment at [117] – [118].

67 In my judgment the present case is one where the apprehended breach of planning control has a flagrant character. A hostel use, if a material change of use, would be contrary to a strong development control policy applied to a specific area. I am referring here to *Ipswich* at the end of [117]. In addition, on the facts of this case, the conduct of the first, third and fourth defendants may properly be characterised as "flagrant". For the purposes of this hearing there is no dispute that there would be a breach of the 2006 enforcement notice if the hotel were to be used as a hostel. A criminal offence would be committed with the possibility of an unlimited fine. The powers of this court, as I have observed, are more extensive under the jurisdiction for contempt of court.

68 In para.41 of her witness statement, Ms Said says unequivocally that one reason why Serco has not placed asylum seekers in the Villa Rose to date is the *ex parte* injunction granted by Julian Knowles J on 23 November 2022. In para.42 she says:

"However, given the ongoing urgent situation, Serco would like to be able to explore suitable options in the GY6 area (including but not limited to the Villa Rose Hotel). This would be in accordance with Serco's contractual obligations with the Home Office to explore suitable solutions in relevant areas. However, Serco has not been able to do this because of the ongoing current proceedings. This is contrary to the position in other coastal towns where Serco has been able to use suitable hotels as IA."

69 The scope of the order made on 23 November is essentially the same as the enforcement notice. Both prohibit or would prohibit hostel use. It is apparent that the enforcement notice with its sanctions has not been a sufficient deterrent to the defendants. That may be because the fourth defendant has been willing to take a risk as to whether the proposed use would constitute a hostel. On the other hand, the injunction granted on 23 November has been effective to prevent an apprehended breach of planning control which is seriously triable. It also appears that Serco's interest in the premises has been stimulated by an offer made by the hotel that it be used to accommodate asylum seekers. That offer has been made despite the existence of the enforcement notice. Mr Aslam's witness statement does not say whether he was aware of the enforcement notice, nor does he otherwise deal with it. In my judgment, these factors weigh strongly in the balance in favour of the continuation of the injunction.

70 In the *Ipswich* judgment the court explained at [118] why, in the very different circumstances of that case, the defendant's conduct had not been flagrant. Those were factors which weighed against the grant of an injunction in that instance. The Home Office

had notified the local authority and invited discussions. There had been adequate time for those discussions to take place. The authorities had then been tardy in expressing any planning control concerns. Here the position is very different. The pressures which have led to an increase in spot-booking have also resulted in the Home Office and Serco not giving any effective notice of their intention to use a hotel for asylum seekers. That is clear from the facts of this case. In addition, it is plain on the evidence from the Home Office and Serco that no consideration was given to planning policies to see whether the site being considered lies within an area subject to a strong, clear development control so as to give rise to a potentially substantial breach of planning control. The Council has made clear its strong planning objections to the intention to use the Villa Rose to accommodate asylum seekers as soon as it was made aware of it.

- 71 As I have said, Policy GY6 is a strong development control policy of the kind to which the *Ipswich* judgment referred at the end of [117]. I do not consider that it would take much effort or time for Serco to carry out a sufficient check of an important policy such as this. Development plans are available electronically. The proposals map would be one good starting point and in the present case would have taken Serco quickly to Policy GY6.
- 72 Indeed, because the Council obtained an injunction in this case as long ago as 23 November, there has since been ample opportunity for the Home Office and Serco to consider their respective positions in the light of Policy GY6. The upshot is that Serco intends to use the Villa Rose Hotel, notwithstanding that policy objection and also to consider using other hotels in the GY6 area, despite the justification for and the objectives of that policy set out in the Local Plan and despite the teeth which that policy is supposed to have.
- 73 The court fully appreciates the importance of the statutory duties to which the Secretary of State is subject under sections 95 and 98 of the 1999 Act, and the exceptional difficulties which are currently being faced in seeking to comply with those duties. Ms Said says that the use of hotels as IA is "a last resort". Mr Kingham uses that same term in relation to the spot-booking of hotels.
- 74 In para.4 of his second witness statement Mr Glason says:
- "The claimant is aware of alternative opportunities to accommodate asylum seekers within its own area of jurisdiction. To my mind, there are potential occasions that would be appropriate for hostel use in order to accommodate asylum seekers which are outside the relatively small part of the borough that is affected by the GY6 policy area and which are therefore less sensitive or more appropriate for this type of use."
- 75 In para.5 he explains that the Council has made offers to discuss alternatives to hotels in the GY6 area from late August 2022. The fourth defendant has not explained why it is necessary to locate asylum seekers in the GY6 area as opposed to other hotels in Great Yarmouth outside that area. Not surprisingly, there is no suggestion that hotels in the GY6 area have features necessary for the accommodation of asylum seekers or that other hotels outside that area would be inappropriate for that purpose. This is a further important consideration.
- 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.

- 77 Mr Brown KC submits that an important consideration is what harm would be likely to result if the court should refuse to continue the injunction until trial. This hearing is taking place very shortly before the holiday period over Christmas and the New Year. He says that data produced by Mr Glason shows that overnight stays in Great Yarmouth tend to drop during the period January to March. But, as Mr Wald KC pointed out, the balance of convenience test does not apply to the issue of whether a permanent injunction should be granted. If a permanent injunction were to be granted, there will be, as I have found, substantial disruption to the asylum seekers then being accommodated. Serco's submission also overlooks the fact that one of the Council's policy objectives is to extend the tourism season by attracting more people to Great Yarmouth year round. That depends upon the hotels in the primary tourism area being available for occupation. This is particularly important, they say, during a period of recovery from the effects of the pandemic. The tourism sector is important to the economy of the district, sub-region and further afield. Mr Brown's argument could be repeated in relation to other hotels in the GY6 area which Serco is considering using, and the harm would be even greater.
- 78 As against that harm if the injunction were not to be continued, Serco has not explained why a hotel in the GY6 area needs to be used, or why a hotel outside the GY6 area cannot be used. In addition, I note that between the *Fenland* decision on 25 November 2022 and today the number of hotels operated by Serco for asylum seekers has increased by only 3 from 106 even though the number of people being accommodated has increased by over 1,000. In addition, there is no evidence from the third defendant to show that the Villa Rose hotel is operating at a loss or faces closure. Mr Aslam's witness statement is wholly lacking in any detail at all about the seven hotels in Great Yarmouth in which the third defendant is interested. It does not even state which of those hotels are located within the GY6 area.
- 79 In the special circumstances of this case, in my judgment the factors in favour of continuing the injunction plainly outweigh those in favour of discharging it. The immediate restraint of a hostel use would be commensurate with the planning harm relied upon by the Council in this case. That applies both to the Villa Rose Hotel itself and to the other hotels in the GY6 areas. So, for these reasons the application is allowed and the interim injunction will be continued until trial.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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