Neutral Citation Number: [2024] EWHC 1006 (KB)

Case No: KB-2024-000917

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/04/2024

Before :

THE HONOURABLE MR JUSTICE SAINI

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Between :

(1) CHELMSFORD CITY COUNCIL

(2) BRAINTREE DISTRICT COUNCIL **Claimants**

- and -

WAYNE MIXTURE **Defendant**

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- -

Mark O'Brien O'Reilly (instructed by **Sharpe Pritchard LLP**) for the **Claimants**
The Defendant did not appear and was not represented

Hearing date: 29 April 2024

This judgment was handed down remotely at 2pm on 30 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Approved Judgment

This judgment was handed down remotely at 2pm on 30 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SAINI

Mr Justice Saini :

This judgment is in 6 main sections as follows:

I. Overview

1. This is a Part 8 claim in which the Claimants seek final injunctive relief pursuant to section 187B of the Town and Country Planning Act 1990 ("the Act"). The relief sought is of both a prohibitory and a mandatory nature. The claim concerns land known as Damases Farm, Damases Lane, Boreham, Chelmsford, Essex, CM3 3AL ("the Land"). The title number registered at the Land Registry is EX327960. The registered owner of the Land (according to the Land Registry Title) is Ms Annette Blane (also known as Ms Annette Ede). The Claimants understand, however, that the land has been sold to the Defendant, Mr Mixture, and that Ms Blane now has no involvement with the Land.

2. The Land falls within the administrative area of both Chelmsford City Council ("the First Claimant") and Braintree District Council ("the Second Claimant"). As identified on the plans produced before me at the hearing, the majority of the Land falls within the area of Chelmsford City Council. The Claimants are thus both relevant local planning authorities ("LPAs"). The residential caravans on the Land (referred to further below) are located on land within the district of the First Claimant.

3. The Claimants' evidence is that there have been actual breaches of planning control at the Land. They wish to remedy those breaches by securing compliance with the multiple Enforcement Notices which have been issued in respect of the Land. The Claimants also say that there are apprehended breaches of planning control at the Land. The Claimants wish to restrain a mixture of unauthorised uses, and this includes any residential occupation.

4. Ms Kirsty Dougal, the First Claimant's Planning Enforcement Manager, has provided two witness statements (and exhibits) in support of this application. Mr Darren Tuff, the Second Claimant's Planning Enforcement Manager, has also provided a witness statement (and exhibits) in support. The Claimants' claim is for an injunction to prevent further breaches of planning control and to require the Defendant to remedy what are described as the "serious, repeated and flagrant breaches" of planning control which have occurred at the Land.

5. At the conclusion of the concise and well-structured oral submissions of Counsel for the Claimants, I indicated that I would grant the final injunction in the terms of the draft before me. These are my reasons.

II. Procedural Issues

6. Despite the Defendant being aware of these proceedings for some time, he did not until this weekend choose to engage, or to file any response to the Claimants' application. This approach was accurately said by Counsel for the Claimants to be characteristic of the Defendant's approach to planning control generally. I will briefly summarise the procedural history.

7. The sealed Application Notice and Claim Form were received by the Claimants from the Court on 27 March 2024. On 28 March 2024 they received confirmation that the hearing of the injunction application was listed for 29 April 2024 for 2 days in a 3 day window. The Claimants' Solicitors served the documentation by post on the Defendant on 28 March 2024. The documentation was sent to his last known known address (provided to them by Essex Police). On 3 April 2024 an email was sent to the Defendant including the same documentation that was posted and providing notice of the date of the injunction hearing. This email address was obtained from the Defendant himself. More specifically, the Defendant confirmed that he was aware of the proceedings as of 9 April 2024. Further, based on the Certificates of Service I was taken to at the hearing, I am satisfied that service has validly been effected on the Defendant (including at an address he was required to reside at under bail conditions).

8. The Defendant did not file an Acknowledgement of Service within 14 days of service of the Claim Form, i.e. by 17 April 2024 (see CPR r.8.3(1)). Nor did he serve any written evidence with an Acknowledgement of Service (see CPR r8.5(3)). Were he to seek to now defend the proceedings with evidence he would need to obtain the permission of the Court.

9. At 21.47 on Saturday 27 April 2024, the Defendant sent an email to the Claimants' Solicitors in the following terms:

> "Dear Sirs, I received your letter of the 23 April with the bundle of documents for a trial that I know nothing about until now. You say that you sent previous letters on 28th March and 17th April but I have not received any of these. I have not signed for any documents. I only received this letter telling me about a hearing yesterday. I do not know what it is about and have had no opportunity to seek any legal advice or prepare to defend myself. Surely justice requires that I am served with this paperwork before yesterday. All solicitors are closed on the weekend. At the moment I am homeless and I am using my friends email address and internet to write to you now. I cannot be in court on Monday because I have had no chance to take any legal advice and I cannot understand why this bundle of documents was only sent by post on the 23rd April. It seems to me this an attempt to prevent me from responding to the application. Furthermore I have another court hearing in Chelmsford Crown Court also on Monday 29 April which my

> solicitor says I should attend. In relation to your application I have important information that contradicts this application for a permanent injunction particularly in relation to the meeting with Kirsty Douglas and her colleague on 9th June 23 which omits an important conversation in which she gave assurances that the City Council would work with me to find a solution to the use of the land. Tis [sic] application seems to run completely contrary to what we agreed. This hearing needs to be adjourned for at least 4 weeks for me to get legal advice Please inform the Judge of this email. My email address is [omitted]".

10. This email was properly drawn to the Court's attention by the Claimants' Solicitors on the morning of the hearing and it was addressed by Counsel for the Claimants at the start of the hearing. The Claimants opposed any adjournment. I refused to adjourn the matter and the hearing proceeded. My reasons for refusing to adjourn the matter are as follows. I start by underlining that there was no formal adjournment application before me supported by evidence from the Defendant. I am satisfied that he was aware of these proceedings and the hearing date. I have described the procedural history above. Aside from the fact that the Defendant was well aware of the proceedings and the fixed date of the hearing before me, the terms of his email show that he has known about the hearing since at least 23 April 2024. He still waited until the weekend before the hearing to raise any issues. The Defendant has served no evidence in support of his claimed obligation to be at a criminal hearing. He clearly has legal advice (in relation to that matter) and one would have expected his solicitor to have informed the High Court of this if it were true. I do not accept that the Defendant has, on the evidence before me, only just become aware of the claim, as he asserts in his email. That is simply untrue. If he had any point of substance in response to the claim he should have made it well before now.

11. Adjournments not only waste time and money but they also cause prejudice to other litigants whose cases have to wait in line. The present matter has been fixed for a 2 day hearing since 28 April 2024. Other litigants could have used this opportunity to have their case heard before the High Court. In all the circumstances, it would not be consistent with the overriding objective for this trial to be adjourned. Fairness does not require an adjournment.

III. The Facts

12. Prior to the development which is in issue in the claim, the Land was vacant grassland which displayed considerable aesthetic value in its appearance and positively contributed to the intrinsic beauty and character of the Rural Area. The Land was not used in connection with any active agricultural trade or enterprise, or for any other purpose associated with a subsisting agricultural working of the land. It is described in the Claimants' evidence as being largely vacant of any development save for two dilapidated buildings and an old brown mobile home.

The Enforcement Notices

13. Complaints were received of an unauthorised encampment on the Land along with diggers, trucks, a caravan and construction equipment in April 2017. Two Enforcement Notices were served by the First Claimant on 21 August 2017. The first Enforcement Notice (EN1) alleged "a material change of use of the land for storage", without planning permission. It stated that "The material change of use of the land for storage is harmful to the character, appearance and intrinsic beauty of the rural area. For these reasons it is contrary to Policy DC2 of Chelmsford City Council Local Development Framework Development Plan Document and the National Planning Policy Framework". EN1 required the use of the Land for storage to cease and the removal "from the land of all vehicles, trailers, the demountable lorry back, plant machinery, caravans, ladders, tools, gas canisters, garden furniture and equipment, domestic items, building materials, waste and any other item stored on the land". EN1 was to take effect on 25 September 2017 and three months was allowed for compliance with the requirements set out within the notice.

14. The second Enforcement Notice (EN2) alleged a breach of planning control to the effect that "Without planning permission, the material change of use of the land for the siting of caravans used for residential purposes". It stated that "The material change of use of the land for the stationing of caravans used for residential purposes is harmful to the character, appearance and intrinsic beauty of the rural area. For these reasons it is contrary to Policy DC2 of Chelmsford City Council Local Development Framework Development Plan Document and the guidelines provisioned by the National Planning Policy Framework". EN2 required the use of the Land for "the siting of caravans used for residential purposes" to cease and for any caravan used for residential purposes to be removed from the Land. EN2 was to take effect on 25 September 2017 and three months was allowed for compliance with it.

15. Both EN1 and EN2 were appealed by the registered owner of the Land. Notably, the sole appeal ground was that the period for compliance was shorter than what should reasonably be allowed. Both appeals were dismissed in a conjoined decision by an Inspector appointed by the Secretary of State.

16. The First Claimant served a further Enforcement Notice (EN3) on 21 March 2018 following the intensified use of the Land. The alleged breach of planning control in EN3 was "Without planning permission, the carrying out of an engineering operation to construct a hardstanding". It stated that "The engineering operation to construct a hardstanding is development which is harmful to the character, appearance and intrinsic beauty of the rural area. For these reasons it is contrary to Policy DC2 of Chelmsford City Council Local Development Framework Development Plan Document and the aims of the National Planning Policy Framework". EN3 required the removal of "the hardstanding from the area shown…" and the removal of "all waste material resulting from the action carried out…". EN3 was to take effect on 23 April 2018 and three months was allowed for compliance. It was appealed and that appeal was dismissed by an Inspector.

17. The Second Claimant served an Enforcement Notice (EN4) on 16 April 2018. The alleged breach of planning control in EN4 was "Without planning permission a material change of use of land for storage". It stated that "The material change of use of the land for storage is harmful to the character, appearance and intrinsic beauty of the rural area. For these reasons it is contrary to Policy CS5 of Braintree District Council's Local Plan". EN4 required the use of the Land for storage to cease and the removal of "all

vehicles, trailers, the demountable lorry back, plant machinery, caravans, ladders, tools, gas canisters, garden furniture and equipment, domestic items, building materials, waste and any other item stored on the Land". EN4 was to take effect on 18 May 2018 and three months was allowed for compliance with the requirements of EN4. EN4 was appealed by the Defendant. Again, the sole appeal ground was that the period for compliance was shorter than what should reasonably be allowed. The appeal was dismissed by an Inspector appointed by the Secretary of State. The Inspector concluded, inter alia, that "the compliance period" was "both reasonable and proportionate and achieves an appropriate balance between the needs of the site owner to seek out alterative accommodation, should that prove necessary, and the need to bring the harm caused by the unauthorised use to an end".

18. A further Enforcement Notice (EN5) was served by the First Claimant on 19 October 2021. The breach of planning control alleged in EN5 was "Without planning permission, the construction of a building and hard surface, and the erection of a telegraph pole". It stated that "The development adversely impacts on the intrinsic beauty and character of the Rural Area. The construction of a building and erection of a telegraph pole are contrary to Policies S11 and DM8 of the Chelmsford Local Plan; the construction of a hard surface is contrary to Policies S11 and DM10. The development as a whole is contrary to the aims and objectives of the National Planning Policy Framework". EN5 required the scraping clear and removal of the hard surface, the removal of the telegraph pole and foundations, the demolition of buildings, the removal of all materials and structures from the Land and the spreading of topsoil and grass seed. EN5 was to take effect on 26 November 2018 and three months was allowed for compliance. EN5 was not appealed.

19. None of the Enforcement Notices have been complied with.

Criminal proceedings

20. On 20 January 2023, the Defendant pleaded guilty at Chelmsford Crown Court (just before the jury was sworn in) to two counts of failing to comply with an Enforcement Notice. The counts were in respect of EN1 and EN2. The Defendant was fined £10,000 in respect of each offence and ordered to pay the fine by 30 September 2024, failing which he will serve a six-month custodial sentence. Recorder Frost, in her sentencing remarks, observed that "It is clear that there was no permission for any development at all", the Defendant "created a commercial complex and you knew that you were in breach" and that "Not only has there been a failure to comply with the various notices this has been wilful and deliberate. There has been increasing commercial organisation and the setting up of a waste management company. It is clear that there has been no intention to comply with the notices. You have prevented access with verbal and threatening behaviour. You have been obstructive all the way up to trial all along carrying on your waste business". The Recorder also said that "The harmful effects of the activities on the environment and residents is obvious", "local residents and the environment has suffered" and "Your attitude tells me that there is no prospect of you complying with court orders".

21. On 20 January 2023, the Defendant was sentenced at Chelmsford Crown Court to prison for 13 months following a prosecution by the Environment Agency in respect of two counts of operating a waste operation at the Land, which is a regulated activity, without an environmental permit. A remediation order was also made which was to be

complied with by 31 March 2024. This has not been complied with. The Defendant was released from prison and placed on licence in May 2023.

22. A Site Visit took place on 9 June 2023. The photographs taken at that time were before me at the hearing as well as a sketch of the Land. A male (not the Defendant) appeared to be living on the Land at that time. This residential occupation was in breach of EN2. The Defendant, on 7 February 2024, indicated that, in the absence of other residential accommodation, he was likely to return to the Land. It now appears, however, that is not living there (at least according to his email of 27 April 2024 which I have set out above at [9]). It also appears that the male who was residing on the Land to provide "security/a presence" is no longer at the Land.

23. Finally, I record that I was shown a recent (April 2024) drone photograph of the Land. That photograph evidences extensive development as well as the presence of a number of vehicles, construction equipment, skips and caravans.

IV. Statutory Framework and Legal Principles

24. Section 55(1) of the Act defines "development" as the "carrying out of building, engineering, mining or other operations in, on, over or under land" (operational development) or "the making of any material change in the use of any buildings or other land" (material change of use).

25. Section 57(1) of the Act provides that "planning permission is required for the carrying out of any development of land".

26. Section 171A of the Act provides that "carrying out development without the required planning permission" is a breach of planning control.

27. Section 172(1) of the Act provides that a LPA may issue an Enforcement Notice "where it appears to them — (a) that there has been a breach of planning control; and (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations".

28. Section 174(1) of the Act provides for the right to appeal to the Secretary of State against an Enforcement Notice. The grounds of appeal are set out in section 174(2) of the Act. An appeal must, pursuant to section 174(3), be made before the Enforcement Notice takes effect.

29. Section 178(1) of the Act provides the LPA with the power, "Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice", to enter the Land to "take the steps" and "recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so".

30. Section 179(1) of the 1990 Act provides that "Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice". Section 179(2) provides that "Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence".

31. Section 179(4) of the Act provides that "A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on". Section 179(5) provides that "A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence".

32. Section 181(2) of the Act provides that "Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly 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".

33. Section 285(1) of the Act provides that "The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought".

34. Section 187B(1) of the Act provides:

> "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".

35. Section 187B(2) provides that "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".

36. Section 37(1) of the Senior Courts Act 1981 provides that "The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so".

37. The leading authority on section 187B of the Act is South Buckinghamshire District Council v Porter & Others [2003] 2 A.C. 558 ("South Bucks"). This case deals with the grant of a final injunction (and is, therefore, applicable here). My task is to decide whether, in all the circumstances, it is just to grant an injunction. I was also helpfully referred to a number of additional cases by Counsel including Ipswich Borough Council v Fairview Hotels (Ipswich) Limited [2022] EWHC 2868 (KB), Great Yarmouth Borough Council v Al-Abdin [2022] EWHC 3476 (KB), Vale of White Horse District Council v Winter [2022] EWHC 2313 (QB), and Epping Forest DC v Halama [2023] EWHC 2906 (KB).

V. Injunction

38. Counsel for the Claimants argued that the evidence in support of this application, as set out in the statements of Ms Dougal and Mr Tuff, shows that there have been actual breaches of planning control. It was submitted that in light of the extant Enforcement

Notices, there can be no doubt but that there have been actual breaches of planning control; and that there are also apprehended breaches of planning control at the Land. I accept these submissions. I will set out each of the matters which I have taken into account in deciding to grant a final injunction.

39. Any use of the Land for any purpose other than for agricultural purposes requires planning permission. The unauthorised development at the Land, both the making of a material change of use and the operational development, is a breach of planning control as, contrary to section 55(1) of the Act, there was no grant of any planning permission for any of the unauthorised development which has taken place on the Land.

40. There has, therefore, in my judgment been a clear breach of planning control. This is made clear by EN1, EN2, EN3, EN4 and EN5, each of which allege breaches of planning control, and which are extant Enforcement Notices (each and every appeal made against them having been dismissed by an Inspector appointed by the Secretary of State to determine that appeal).

41. The material change of use as well as the operational development which has been carried out at the Land represent, in my judgment, a serious, and flagrant, breach of planning control which needs to be remedied. It has plainly given rise to material planning harm: see further at [48] below. I am also persuaded by the evidence that there is a risk of future development on the Land, including residential occupation of the Land. Although the Defendant appears currently to have access to accommodation, he has previously indicated that in the absence of alternative residential accommodation he would return to the Land.

42. Further, the Defendant allowed residential occupation of the Land to continue, even after the service of EN2 prohibiting that use. Although that residential occupation has, for now, ceased, the Claimants are right to be concerned that there also an apprehended breach of planning control on the Land in the form of the potential for future residential occupation of the Land.

43. The caselaw is clear that the "degree and flagrancy" of the breach of planning may be critical (see Ipswich at [93] citing South Bucks). There is no justification for the Defendant to have repeatedly ignored the requirement to obtain planning permission before carrying out development on the Land. There can be no justification for wilful and persistent non-compliance with the Enforcement Notices and the continued use of the Land in breach of planning control.

44. As set out in South Bucks and Ipswich, the need to enforce planning control in the public interest is a relevant consideration. There is a public interest in enforcement action being taken against breaches of planning control, especially where breaches are flagrant breaches. This is plainly the case here.

45. In South Bucks, it was held that "a history of… persistent non-compliance" will point towards the "grant of an injunction". There has been a long history of persistent non-compliance in the present case. I note in particular that the Defendant's unauthorised use intensified after Enforcement Notices had been served. Residential occupation was allowed in breach of EN2. The Defendant has not complied with any of the Enforcement Notices served by the Claimants and has displayed no willingness to do so.

46. The Defendant has pleaded guilty to a failure to comply with EN1 and EN2. His conduct indicates a wilful, and flagrant, disregard for the integrity of the planning system.

47. In South Bucks at [76] it was said that "What uses should or should not be allowed of lands within the area of the authority, what development should or should not be permitted to take place upon lands, are questions for the planning authorities and not for courts of law to resolve" and that matters of "planning judgment" is "forbidden ground" for the Court. The Claimants have made clear that they consider that the unauthorised use of the Land, and the development, which has taken place is, in the exercise of their planning judgment, unacceptable. The merits of that planning decision are not for the Court. What the Court must do, however, is "weigh up the public interest in securing the enforcement of planning policy and planning decisions against the private interests of the individuals who are allegedly in breach of planning control" (South Bucks at [73]). The private interests in play in the case before me are limited.

48. On the basis of the evidence before me, I am satisfied that the planning position/harm is, as follows:

(1) The change of use of the land from a largely open space of untended trees and grassland into an area containing substantial amounts of vehicles, trailers, caravans, hardcore, building materials and residential paraphernalia is incongruous in this otherwise rural setting.

(2) The stationing of caravans and their use for residential purposes, and the associated domestic items and activities that arise from the nature of this use, such as garden equipment, gas canisters, the parking of vehicles, domestic waste and other openly stored domestic items, is equally harmful to the countryside.

(3) The material change of use of the land for the stationing of caravans used for residential purposes is harmful to the intrinsic character and beauty and appearance of the rural area, contrary to Policy DM10 of the Chelmsford City Council Local Plan and the National Planning Policy Framework.

(4) The use of the Land for residential purposes is not acceptable in planning terms when considered against planning policies and due to the countryside location.

(5) The unauthorised change of use which has occurred at the Land is materially harmful to the character, appearance and intrinsic beauty of the rural area, and contrary to both local plan policy and national policy.

49. There is in my judgment a clear conflict with the planning policies in the development plan and national policy. Like Al-Abdin, there are, therefore, "particular policy considerations…[which] strengthen the Council's case on breach of planning control significantly".

50. Standing back, in my judgment, an injunction is necessary and expedient because of all the above factors, including the clear conflict with the development plan policies and national policies. An injunction will uphold the integrity of the planning system as conventional enforcement measures are not likely to be effective in preventing further breaches or in bringing the breach to an end. As the history shows, the Claimants have attempted to remedy the breaches of planning control through several Enforcement

Notices over a considerable period of time, but these have not been effective. On the facts, where there have been repeated failures to comply with planning enforcement notices and disregard for authority, an injunction appears to be the sole route for securing compliance. An injunction was sought by the Claimants as the last resort.

51. In South Bucks, at [31], it was explained that "When an application is made to the Court under section 187B, the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected, and on examination they weigh against that grant of relief, the Court will be readier to refuse it. If it appears that the local planning authority has fully considered them and none the less resolved that it is necessary or expedient to seek relief, this will ordinarily weigh heavily in favour of granting relief, since the Court must accord respect to the balance which the local planning authority has struck between public and private interests". Those aspects have been fully considered by the Claimants who have resolved that, despite the personal circumstances of the Defendant, it is necessary and expedient to seek relief. On the evidence before me, the Claimants have given careful consideration to the human rights and equalities impacts. They have considered the Defendant's Article 8 ECHR rights, and his rights pursuant to Article 1 of Protocol One. Those are qualified rights, and they may be interfered with where to do so is justified. The Claimant considers that any interference here is both justified and proportionate. That was plainly a lawful conclusion.

52. Finally, I note that the Claimants have suggested that the Defendant have three months to comply with the mandatory elements of the order. This weighs in favour of the proportionality of the order as clearly the time allowed for compliance will minimise any hardship which may be caused to the Defendant. I note however that the hardship is, in any event, extremely limited - this is not a case where the Defendant, or anyone else, is occupying the Land. There is, in any event, no evidence before this Court adduced by the Defendant of what, if any, hardship would actually flow from the grant of an injunction.

VI. Conclusion

53. The evidence amply demonstrates that the breaches of planning control will continue unless and until effectively restrained by the Court and that nothing short of an injunction will provide effective restraint. The Claimant has exhausted the other enforcement measures open to it and an injunction is necessary to prevent further harm from occurring and to address the harm which has occurred. The injunction, in the draft order before me, is proportionate having had regard to the interests of the Defendant.

54. For these reasons, I will grant a final injunction, with both prohibitory and mandatory elements. It is plainly just and convenient to do so in the circumstances of persistent flouting of planning law on the facts before me. The Claimants are also entitled to their costs of the claim.