IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2022] EWHC 3132 (KB)

No. KB-2022-004163

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 25 November 2022

Before:

MR JUSTICE HOLGATE

B E T W E E N :

FENLAND DISTRICT COUNCIL — Claimant

- and -

(1) CBPRP LIMITED
(2) SERCO LIMITED
(3) H & H NORTH LIMITED — Defendants

MR C HOWELL WILLIAMS KC and MR M O'REILLY appeared on behalf of the Claimant.

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

MR J LITTON KC (instructed by Clyde & Co. LLP) appeared on behalf of the Second Defendant.

J U D G M E N T

MR JUSTICE HOLGATE:

Introduction

1 The claimant, Fenland District Council ("FDC") is the local planning authority for its district. On 8 November 2022, FDC issued a claim under Part 8, seeking an injunction restraining the defendant from using or facilitating the use of any hotel within the town of Wisbech as a hostel for the purposes of accommodating asylum seekers or at all. At that stage, the defendants were the Rose and Crown Hotel Limited ("first defendant") and Serco Limited ("second defendant"). The first defendant was the owner of the hotel. The second defendant is a contractor engaged by the Home Office to source accommodation for asylum seekers on a regional basis.

2 On 7 November FDC had made an out-of-hours application *ex parte* without notice for an injunction in similar terms but specifically in relation to the Rose and Crown Hotel, 23 - 24 Market Place, Wisbech, which had started to be used to accommodate asylum seekers. Mr Justice Jay refused the application. He considered it inappropriate for the application to have been made without notice.

3 On 8 November FDC issued an application on notice for an injunction to prevent the Rose and Crown and any other hotel in Wisbech from being used to accommodate asylum seekers. The hearing of the application took place before me on 23 November.

The parties before the court

4 After FDC launched its claim, its solicitors discovered that the Rose and Crown had been sold on 30 May 2022 by Rose and Crown Hotel Limited to CBPRP Limited. An application to register the transfer appeared to be pending at the Land Registry. In addition, the premises' licence had been transferred to H & H North Limited in July 2022.

5 The solicitors acted quickly and diligently to establish those facts. They issued an application to amend the particulars of claim, substituting CBPRP Limited as D1 and adding H & H North Limited as D3. They served the papers at the registered addresses of D1 and D3 and on the hotel manager on 10 November and again on 11 November. No objection is taken by D1 or D3 to service having been properly effected and in good time for the determination of the application. No objection was taken to the joinder of CBPRP Limited as the owner of the hotel. Accordingly, on 14 October I made an order substituting D1 and adding D3. Other amendments to amend the particulars of claim were to be dealt with at the hearing on 23 November 2022.

6 The order specified that any application to vary or set aside the order should be made by 16 November. So that provided an opportunity for any issue about the joinder of a party to be raised. No such application was made by D1.

7 It was only on 16 November in the afternoon that Mr Haseeb Aslam provided a brief witness statement "on behalf of H & H North Limited". In paragraph 1 he says that he owns 60 per cent of D3 and is directly involved in managing the company. He is also a director of D1. He now said, for the first time, that D1 has sold the freehold of the hotel and the business to Barnstone Limited and a five-year tenancy was granted simultaneously by Barnstone to D3. He asserts that D1 has nothing to do with the case, but D1 has still made no application to the court to set aside its joinder as first defendant. This witness statement is highly unsatisfactory. Mr Aslam does not say when the transfer took place or produce any supporting documents, including the tenancy. He does not say whether there are links between D1 and Barnstone or whether Mr Aslam is a director or shareholder of Barnstone.

8 Mr Martyn Berkin appeared on behalf of D1 and D3. He was unable to answer any of these questions, despite their obvious relevance. His client had given him no instructions on the matter. His client was not present in court or contactable. Although it had previously been said that he was suffering from COVID as recently as 16 November, by 23 November he was out of the UK, apparently somewhere in the Middle East. Mr Aslam ought to have dealt with these matters properly in his witness statement with exhibits.

9 The change of ownership alleged potentially gave rise to a procedural issue, namely whether the hearing should be adjourned to enable notice to be given to Barnstone Limited. D1 and D3 ought to have raised this issue in good time before the hearing. However, Mr Berkin was able to assist the court. He stated that the hotel is being operated by the tenant and that D1 (referring here to CBPRP Limited and/or Barnstone Limited) is merely the owner of the freehold reversion. He accepted that the hearing should proceed today. If an injunction is granted, the order should provide for Barnstone Limited to have liberty to apply on notice to discharge or vary the order. The claimant was represented by Mr Craig Howell Williams KC and Mr Mark O'Reilly and D2 was represented at short notice by Mr John Litton KC. They agreed with that course of action.

10 I also note that according to the second witness statement of Tasneem Said, an in-house lawyer employed by Serco, that company deals with an individual at the hotel known as Mr Shabaz Aslam. He is employed by another company known as CB Hotels Limited, a company not mentioned by D1 or D3 or by Mr Haseeb Aslam. This aspect was not addressed by Mr Berkin. No information has been given to the court about Mr Shabaz Aslam and whether he is related to Mr Haseeb Aslam. No information has been given about the structure of CB Hotels Limited, its directors and shareholders and any relationship with any of the other companies already referred to.

11 The unsatisfactory state of this part of the evidence reflects the way in which D1 and D3 have chosen to be represented. Mr Berkin appears as an advocate instructed by direct access. He told the court that he has no licence to conduct litigation. So in such circumstances D1 and D3 appear to be acting effectively as litigants in person through Mr Haseeb Aslam. Like any other litigant, they have an obligation to assist the court in furthering the overriding objective (CPR 1.3). It was deeply unsatisfactory that nobody appeared in court on behalf of D1 or D3 to provide Mr Berkin with instructions.

The application for an interim injunction

12 The claimant now seeks an interim injunction until trial in the following terms:

> "With immediate effect and until … further order of the court, the defendants must not use, or facilitate the use of, the Rose and Crown Hotel … or any other hotel within the town of Wisbech as a hostel for the purposes of accommodating asylum seekers or at all."

The town of Wisbech was not further defined. One other hotel has been mentioned in the papers, namely, Elme Hall Hotel. In fact this is located in the area of the Borough Council of Kings Lynn and West Norfolk. Mr Howell Williams accepted that the claimant cannot take enforcement action, including action under s.187B of the Town and County Planning Act 1990 ("the 1990 Act"), outside its administrative area. He added that the claimant was nonetheless concerned about a third hotel, the White Lion Hotel, and more generally boarding and guesthouses lying within Wisbech.

13 In my judgment it would be inappropriate for the court to grant any injunction on this application in relation to premises other than the Rose and Crown. No sufficient evidence has

been produced to justify an injunction in relation to other hotels. For example, there is no evidence of any wider apprehended breaches of planning control. No other hotel owner or operator has been notified of these proceedings.

14 The court has considered witness statements from a number of persons: Michelle Connor, the claimant's solicitor; second and third witness statements from Mr Nicholas Harding, Head of Planning at FDC; Thomas Roberts, a legal director at Clyde & Co., D2's solicitors; Rachel Wright of Serco; two witness statements of Tasneem Said and a witness statement from Helen Mascurine, Head of Home Office Asylum Support Casework and Compliance. The court also has the witness statement of Mr Haseeb Aslam, to which I have referred.

15 The wider context for this application was set out in a recent judgment of the High Court. *Ipswich Borough Council v Fairview Hotels (Ipswich) Limited & Serco Limited*; and *East Riding of Yorkshire Council v LGH Hotels Management Limited & Ors* [2022] EWHC 2868 (KB). I refer in particular to paras. 2 and 21 to 29. The judgment explains such matters as the statutory obligations on the Home Secretary to provide accommodation for destitute asylum seekers and the schemes for the provision of initial accommodation ("IA") and dispersal accommodation. There is no need for that material to be repeated in this judgment.

16 Information on those subjects has been updated for the purposes of this application. I highlight a few points. In the week ending 13 November 2022, Serco accommodated 520 new asylum seekers, all in IA. In the previous two weeks, the comparable figures had been 850 and 950 (see *Ipswich* para.4). In para.13 of her first witness statement, Ms Said states that the number of migrants now being held at the Manston Centre has returned to what the Home Office considers to be safe levels. However, she adds that there is continual pressure to house the high levels of asylum seekers entering the country so as to keep facilities such as the Manston Centre at a sustainable level. At para.24 she states that Serco is currently working with 106 hotels to provide IA, housing 12,112 people. In *Ipswich*, Serco was then working with 84 hotels and accommodating 11,210 asylum seekers in IA. So the number of hotels has increased by about 26 per cent and the number of persons accommodated over that same timescale has increased by 8 per cent. The clear implication is that, on average, Serco has found it increasingly necessary to use smaller hotels than before.

17 Paragraph 29 of the *Ipswich* judgment records 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. In para.27 of her first witness statement Ms Said explains that this is at a greater cost and causes disruption to asylum seekers. However, it has proved necessary because of the extreme urgency to accommodate large numbers of persons under the Immigration and Asylum 1999 Act ("the 1999 Act").

18 At para.35 of her witness statement Ms Said says that there are currently 21 occupants in the Rose and Crown Hotel. They had come either from the Manston Centre or, in some cases, the Yarlswood Detention Centre. However, in her second witness statement she made it clear that those who had been accommodated previously at Yarlswood had only been there for initial processing because of overcrowding at the Manston Centre at that point in time. The court was told that these were not persons subject to immigration detention, for example, for the purposes of removal or because immigration bail had been refused.

19 At para.33 she says that as part of the contingency measures Serco has undertaken to spot book all the rooms in the Rose and Crown Hotel. In other words, the hotel has effectively

been block-booked. Even if individual rooms are selected on a spot booking basis, the hotel is not available to the public.

20 It was unfortunate that no further information was provided in this case by Serco on the precise nature of the contract, with whom and how it was arranged. There is no information as to the length of any arrangement which has been made by Serco with the hotel operator, whoever that may be. It appears that the occupation by asylum seekers will continue for as long as the arrangement lasts. I find this surprising, because it is obvious that any hotel operator would want to know how long the arrangement would continue for and how it could be brought to an end. It is also unclear whether Ms Said made the arrangements herself or whether she was relying upon another, unidentified source.

21 Finally by way of update, in para.4 of her second witness statement Ms Said says that as of 20 November, according to the Home Office, over 42,600 individuals are now reported to have arrived in the UK by small boat this year. The comparable figure given to the court in the *Ipswich* case was over 40,000.

Legal principles

22 The judgment in the *Ipswich* case set out at paras. 68 to 97 and 110 to 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 s.187B and the legal approach to the balance of convenience. No issue was taken with that legal analysis by any of the parties and, accordingly, it is unnecessary for me to set out that material in this judgment.

Local context

23 The Rose and Crown Hotel is located in a small market town which has a population of about 26,000 people and is set in a rural area. In his second witness statement, Mr Harding says that, unlike most of Cambridgeshire, Wisbech suffers from significant deprivation, with some wards being in the 10 per cent "most deprived nationally" category, including the ward of Medworth, within which the Rose and Crown is located. It is an isolated town with few transport links to other population centres and no railway services. He says that public services are significantly stretched in relation to healthcare, school places, teacher recruitment and the police. As will be seen, the main plank of the Council's argument on the balance of convenience in this case, is that Wisbech is said by the Council to be unsuitable for asylum seekers at any stage of the asylum process because they would be exposed to risks of harm.

Chronology leading up to these proceedings

24 Ms Said states that the Rose and Crown was first identified as potential IA on 2 November this year by a travel agency used by Serco to book accommodation. It is a three-star hotel in good condition and meets the necessary requirements for the purposes of accommodating asylum seekers. It has 28 rooms, with a maximum occupancy of 52 people. Twenty-four of the 28 rooms are twin rooms and the remaining 4 are singles. All rooms are en-suite. There have been no physical alternations to the hotel and none are proposed. The hotel has its own staff, who operate reception, clean the rooms and cook and provide meals. The Council says that it is a hotel in the town centre which serves business and tourist clients.

25 In its skeleton argument, the Council explains how it has sought to engage with the Home Office and Serco for a number of months regarding the Asylum Seeker Dispersal Scheme. On 30 June 2022, Councillor Hoy responded to a consultation by the Home Office on the wider dispersal of asylum seekers in the UK. This relates to accommodation provided under s.95 of the 1999 Act. She said:

> "As a district, we do not feel we should take any asylum seekers as we do not have the services here, particularly the cultural links. We have successfully accommodated 2 Syrian households under the VPRS Scheme, but we recognised the need for support from Peterborough to develop those links for that scheme."

She then went on to express the Council's concern that it should be involved in identifying any further locations for asylum seekers. She continued:

> "In the last 15 years, Fenland has seen the largest inward migration of Central and Eastern Europeans of any district in Cambridgeshire. Wisbech, our largest market town, has seen several thousands of people move there from Central/Eastern Europe. This inward migration led to tensions within the community and after several years and ongoing work to build community cohesion I am concerned that this could be undone by people moving to the area whilst their asylum application is being considered without considered pre-planning."

Plainly, the letter refers to inward migration which has taken place in the past and which, through action on the part of the local authority and the community, has been successfully addressed. Mr Howell Williams confirmed that, in contrast, Wisbech has received relatively few asylum seekers to date.

26 On 15 and 25 August 2022 and 12 September 2022, meetings took place between FDC and Serco at which the Council's officers explained their view on the unsuitability of Wisbech for asylum seekers. It is common ground that this was in the context of dispersal accommodation.

27 Following the third meeting, Rachel Wright, responsible for procurement at Serco, wrote to FDC on 13 September stating that they would treat Wisbech as a "no go" area in their "due diligence calculator" because of the community cohesion and concentration issues. In her witness statement, Rachel Wright says that her role is limited to finding solely dispersal accommodation in the form of 2, 3 and 4 bedroom family homes, flats and HMOs. IA is dealt with by a different department in Serco. The type of accommodation, method of support and supervision are completely different. Ms Wright also says that persons placed in IA in a particular area would not ultimately be dispersed in the same area for longer term accommodation. IA is emergency, short-term accommodation for those beginning the asylum process. IA, in other words, represents short-term, transient accommodation.

28 Mr Howell Williams submitted that the distinction drawn there between IA and dispersal accommodation is false. Asylum seekers are potentially vulnerable persons and the risks that are said to exist in Wisbech apply to them irrespective of whether they would be staying in IA or in dispersal accommodation or, in other words, irrespective of the nature and length of the stay. For the purposes of this judgment, I will assume that he is right. Even so, the issue ultimately comes down to the nature and extent of the risk as disclosed by the evidence before the court relied upon by FDC.

29 On 26 September, Councillor Hoy wrote to the Government in connection with the dispersal scheme, expressing FDC's concern that cheaper, more affordable, private rented accommodation would take a larger proportion of the number of asylum seekers being dispersed. She relied upon essentially the same points as has been referred to in other correspondence and was the subject of evidence and submissions in the hearing. They included the risk of asylum seekers being exploited by criminals.

30 On 3 November 2022, FDC took part in a meeting with other local government officials and Serco to discuss a proposal to use Elme Hall as contingency IA. The claimant raised the same concerns as previously in relation to the suitability or otherwise of Wisbech as a location. Serco advised the claimant to contact the Home Office.

31 On 4 November, the claimant discovered that the Rose and Crown was to close permanently from that day. Towards the end of that afternoon, FDC spoke with David Smyth of Serco and received an email from him. He said that in the previous 48 hours the Home Office had asked Serco to spot purchase rooms for asylum seekers. The Rose and Crown had been commissioned to take three families who would arrive that day. He also said that no further contingency hotels were then being planned in Norfolk, Suffolk or Cambridgeshire. The aim was to help ease pressure at Manston. The asylum seekers would be supported by Serco staff on site and also by Migrant Help. They would be provided with full board and laundry services.

32 On 7 November FDC sent a letter dated 6 November to the Home Office. They set out their strong concerns about the proposal. They relied upon the understanding they had reached with Serco on the unsuitability of Wisbech in connection with the dispersal programme. The letter set out again FDC's concerns about the risks to the safety of asylum seekers if accommodated in Wisbech. They said that unless assurances were given that the Rose and Crown would not be used, FDC would take legal action in the context of an alleged breach of planning control. No assurances were given by the Home Office and consequently the claim was brought.

33 Subsequently, additional asylum seekers were moved to the hotel. At one stage, a 15-year old child was accommodated there, but he or she has since been relocated. On 8 November, there were 21 asylum seekers on site. Five had absconded. Mr Smyth told the Council that in relation to those 5 persons, Serco would take its lead from the police "bearing in mind Operation Pheasant", to which I will refer below. FDC is concerned that the 5 absconders may face the risks of exploitation to which the Council has referred to in its correspondence and evidence. The number of asylum seekers in the hotel has remained at about 21 persons. Currently, they are all single males.

American Cyanamid

34 I turn to apply the principles in *American Cyanamid*. D1, D2 and D3 accept that there is a triable issue as to whether a breach of planning control has taken place, 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 material change of use has occurred. I agree that there is a triable issue.

35 It is also agreed that damages would not be an adequate remedy for FDC. But the District Council does not offer a cross-undertaking as to damages, applying the principles stated in *Kirklees Metropolitan Borough Council v Wickes Building Supplies Limited* [1993] AC 227. That position is accepted by the defendants. At this stage, the defendants have not put forward any quantification of loss that would result from the grant of an interim injunction and that is a factor I bear in mind. That is not to say, however, that it could not be raised at any final trial.

36 All parties agree that in these circumstances the decision on whether an injunction should be granted depends upon the balance of convenience. The claimants say 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.

The balance of convenience

37 The considerations set out in the judgment in the *Ipswich* case at paras.110 to 111 are applicable. One of the key considerations is whether the immediate restraint of the proposed use of the hotel by injunction, rather than the use of other enforcement action under the 1990 Act, would be "commensurate" with the harm upon which the local authority relies. The local authority accepts that the justification for granting the injunctions at this stage until trial depends upon the seriousness of that alleged planning harm.

38 This is not a case in which the use of a hotel would cause environmental damage or harm to amenity, for example, the amenity of neighbouring uses. It is not suggested that there would be harm to the character or appearance of the area. No issues are raised in relation to traffic generation or impact on highways.

39 If an injunction is not granted because such relief would not be commensurate with the harm alleged and if other enforcement action were to be successful subsequently, then the alleged hostel use would be brought to an end and the property then made available for hotel use. In that context, no irreparable damage would be caused and the position to that extent is the same or similar to that in the Ipswich decision.

40 The observations of the court in Ipswich at paras.114 and 115 on the public interest in the integrity of the planning system are also applicable.

41 On flagrancy, in my judgment the reasons set out in para.117 of *Ipswich* as to why the alleged breach of planning control is not flagrant are applicable. Mr Howell Williams submits that the risk in Wisbech to the safety of asylum seekers makes the alleged breach flagrant, but in my judgment that depends upon an assessment of the evidence on that risk, which I will deal with in a moment.

42 As to whether the defendants' conduct has been flagrant, this depends upon a combination of factors as, for example, in *Ipswich* at para.118. The answer to this question is fact-sensitive in each case. First, this is also a case where the defendants advance respectable arguments that no breach of planning control would be involved. They say the contrary view of FDC will be strongly contested. Second, evidence has been given by Serco of having made similar arrangements to accommodate asylum seekers in a substantial number of hotels in this country without action being taken for alleged breaches of planning control, at least not until proceedings started to be brought recently. As I have said, Serco works with 104 hotels to provide temporary IA. But, thirdly, as Mr Howell Williams points out, this is a case where neither the Home Office nor Serco gave substantial advance notice of a proposal to use the hotel for asylum seekers. Fourthly, he also points out that when they did give notice, the claimant advanced its planning objections quickly. On the other hand, leading counsel confirmed that the shortness of the notice given has not prejudiced the ability of the local planning authority to appreciate the nature of the use to which the premises will be put, or to advance evidence on harm or any other factor relevant to the balance of convenience upon which it wishes to rely. This, it seems to me, is an important consideration to weigh against the two points made by Mr Howell Williams.

43 I turn to consider harm. Mr Harding, Head of Planning at FDC, says that the use of the Rose and Crown as a hotel causes planning harm. It is only available to asylum seekers, it is not available to the public. He says the hotel contributes to the local economy by providing accommodation for business and tourist guests. By contrast, asylum seekers in the IA category do not contribute to that economy.

44 He draws attention to Policy LP6 of the Fenland District Council Local Plan which was adopted in May 2014. It is a long policy. The relevant parts of the Policy are expressed in very broad, general terms as follows:

> "Existing cultural, tourism and visitor facilities will be protected and, where possible, enhanced. The development of new heritage tourism opportunities will be encouraged where appropriate. Planning permission will only be granted for a scheme which would result in the loss of an existing cultural, tourist or visitor facility if it can be demonstrated that the use is no longer viable, or an appropriate alternative is to be provided, which is at least equivalent to that lost in terms of quantity and quality and is in a sustainable location to best meet the needs of users … Proposals that would have an adverse impact on a cultural, tourist or visitor facility will not be supported…"

45 No information has been given to the court about the make up of the economy in Wisbech or the district, or the contribution made by the Rose and Crown to that economy or to the town centre, or its relative importance compared to other sectors, or the extent to which other hotel facilities are available, such as Elme Hall. It has not been shown that the Local Plan deals with those matters.

46 On the evidence before the court, the use of this hotel as contingent IA for asylum seekers would be temporary. The local planning authority has its normal powers under the 1990 Act to bring any ongoing loss of hotel use constituting a breach of planning control to an end (see para.130 of *Ipswich*). In all the circumstances, I do not attach significant weight to this factor in the balance of convenience.

47 But Mr Howell Williams said that the central focus of his client's application relates to the safety and welfare of asylum seekers if they were to be accommodated in Wisbech. It is not said that the hotel is unsuitable. The point made by the claimant is that the town is unsuitable. But FDC does not claim to have any particular expertise in assessing, for example, risks of asylum seekers being trafficked. Not surprisingly, therefore, they have sought to rely upon the opinion of the police.

48 According to its skeleton argument, the claimant has invited Inspector Morris, the neighbourhood policing inspector for Fenland District, to submit a witness statement. The Inspector asked his superiors to approve a draft witness statement but they declined authorisation. FDC understands that this is in fact the responsibility of a different part of Cambridgeshire Police, which was then asked to authorise the provision of a witness statement from the police. However, the position remains that no such statement has been filed.

49 Instead, there is an email dated 7 November this year, some two weeks ago, from Police Sergeant Arnold of the Wisbech Neighbourhood Policing Team. In his first paragraph, he says:

> "Wisbech is a large town with a number of small villages directly attributed. From a policing perspective, the neighbourhood team who would be responsible for the continued community work surrounding the asylum housing is made up of 1 sergeant and 5 police officers. We currently do not have PCSOs available. These resources are extremely thin, the demand placed on neighbourhood policing is excessively high and this increased pressure would cause further issues amongst our communities."

He does not say what the issues would be. It has not been said that resources would be inadequate and if so how. There has been no reaction to this statement from more senior officers, for example, as to whether further resources would be needed and, if so, what and whether they could or could not be provided. Nothing is said about the seriousness of the "issues" to which he alludes in general terms.

50 Secondly, Mr Harding refers to a national police operation "Makesafe", which is ongoing. There is no evidence as to when this national operation began. It is concerned with the targeting by criminal gangs of vulnerable children in children's homes for exploitation. On this aspect, PS Arnold says this:

> "Fenland disproportionately has the highest number of children's care homes per capita than almost anywhere in the UK. As a result, we suffer from a high proportion of missing from home episodes. There, children often become subject of criminal exploitation and sexual exploitation. Whilst this does not directly impact the housing of asylum seekers, it must be recognised that there are persons in operation within Wisbech actively looking to exploit vulnerable persons."

51 Once again, a generalised point is made with very little detail. This is despite the fact that Serco had previously made the point in evidence that no real link has been put forward between a problem which exists on a national level in relation to children's care homes and the accommodation of asylum seekers, even children, in a hotel with the provision of security. I am not surprised that the officer says that this does not directly impact upon the "housing" of asylum seekers. I would go further. With respect, no explanation has been given as to how this impacts on the accommodation of asylum seekers in a hotel such as the Rose and Crown.

52 An undertaking was offered by Serco not to accommodate children in the Rose and Crown if the court should consider that to be necessary. On the evidence, and as matters stand today, I am not persuaded that it would be appropriate to require any such undertaking to be given.

53 Thirdly, PS Arnold says that:

> "In regard to exploitation, Operation Pheasant has been ongoing for over ten years now. This is a policing operation set up to tackle issues surrounding modern day slavery, human trafficking and exploitation. This is a whole force operation but is based out of Wisbech and always has been, given that the main issues faced are primarily in Wisbech. The people being placed into hotels would be extremely vulnerable to possible exploitation. The recent changes to the Modern Day Slavery Act used case studies specifically from Wisbech to help evidence the need for change. I cannot overstate the concerns we have in this area. There are recognised… organised crime groups working in Fenland specifically aimed at exploitation."

54 It is necessary to disentangle two strands contained in that paragraph. First, there is Operation Pheasant on which FDC has given a little more detail. This commenced in 2012 to tackle exploitation and serious organised crime *arising from the private rented sector*. Indeed, in one of her letters, Councillor Hoy says that it is targeted at rogue landlords and their agents. The operation shares intelligence information on "high risk HMO properties".

55 The material relied upon by the Council does not explain the nature of the criminal activities the subject of this investigation. Although it is not for the court to draw speculative conclusions, the language used is broad enough to include, for example, drug gangs exploiting vulnerable people such as drug addicts by getting them to acting as "cuckoos", allowing their homes to be used for drug dealing. The evidence does not explain how whatever criminal activity is being carried on in HMOs poses a risk for individual asylum seekers who are accommodated in a hotel such as the Rose and Crown, where Serco provides a security service. Moreover, the evidence is that after a relatively short stay in the hotel as contingency IA, asylum seekers would be dispersed to other areas.

56 According to the evidence, the second strand, "the case studies" referred to by PS Arnold, relate to one operation, Operation Endeavour. This was an operation over three days in October 2013 which uncovered, according to one source, 30, and another, 100, migrant workers being trafficked from "properties" in Wisbech. It is said that gang masters were convicted. Another source states that two prison sentences were imposed. This was some nine years ago. No evidence is provided of any similar arrests and prosecutions subsequently. There is no real explanation in the evidence as to how this material demonstrates a current risk for asylum seekers being accommodated in a hotel such as the Rose and Crown.

57 The fourth point made by PS Arnold is:

> "The neighbourhood team have been running an operation named Luscombe, aimed at supporting homelessness, antisocial behaviour and begging. The operation has begun to see real success removing persons from the street and providing support. An influx of persons needing extra support will take these vital services away from people that need them and impact on the effectiveness of this multi-agency operation."

According to additional information provided to the court, this operation commenced in September 2022. In my judgment, Serco was correct in submitting that the homelessness and problems associated with rough sleeping are immaterial to the application before the court. Here, we are dealing with asylum seekers accommodated in a hotel used as contingency IA. The object of that accommodation is to avoid asylum seekers becoming homeless in the initial stages of the asylum process. In addition, as Serco pointed out, there is no evidence before the court that the accommodation of asylum seekers in hotels is related to antisocial behaviour on the streets.

58 PS Arnold's fifth point relates to comments on social media and the risk of social tensions which will need to be managed. It is a very generalised observation with no supporting evidence. It stands in contrast to the success which this community has displayed in the past in accommodating net in-migration on very much more substantial scale.

59 Mr Howell Williams submits that the court should take into account the fact that the Rose and Crown could only accommodate up to 52 people, whereas the Novotel in Ipswich, for example, could accommodate 200. He also submits that the evidence presented by FDC on risk to asylum seekers is sufficiently serious that D2 should be called upon to explain in more detail the steps that it has taken to identify alternative accommodation and to explain why other accommodation should not be used instead.

60 The evidence shows that Manston is now operating normally. But, in normal operation, that facility is only intended to provide accommodation for up to 24 hours. By definition, it is not an alternative to the provision of contingency IA for temporary periods of 21 days or more.

61 The evidence before the court shows that the need for contingency IA has increased since the *Ipswich* decision. There is nothing to suggest that it has reduced. There are more hotels in use and on average the size of the hotels being used has decreased. There is no evidence to suggest that smaller hotels do not make a necessary or important contribution to tackling the present problems relating to compliance with the statutory duties under ss.95 and 98 of the 1999 Act. Furthermore, the fact that some of the current occupiers were previously accommodated in Yarlswood Detention Centre before being transferred to the Rose and Crown as contingency IA shows that the system is still under considerable pressure, if not stress.

62 In my judgment, taken at face value, FDC's evidence does not demonstrate a serious level of risk to asylum seekers accommodated in a hotel such as the Rose and Crown. It does not call for any further explanation of alternatives to that hotel than has been provided in the evidence before the court. Furthermore, in my judgment it does not amount to a weighty factor, along with the planning matters referred to by Mr Harding, which would outweigh the substantial weight to be given to the need to accommodate asylum seekers in contingency IA in a system of supply which is having to deal with an unprecedented level of need under the 1999 Act. Overall, the immediate restraint of the continued accommodation of asylum seekers at the Rose and Crown would not be commensurate with the level of harm which, on the evidence before the court, the claimant has relied upon.

63 I should also mention part of the claimant's skeleton, where it is suggested that if the court were to refuse an interim injunction it "would be, in effect, authorising an unlawful use for a temporary period…". I must say emphatically that that submission is entirely misconceived. The refusal of an injunction by this court does not in any way authorise any unlawful activity that the local planning authority is able to demonstrate. If a breach of planning control has taken place, the local authority can take enforcement action under the 1990 Act. All that the court has decided is that the claimant has not been able to justify the grant of an interim injunction under s.187B, applying well-established legal principles.

64 There is one further matter which I will mention briefly. In his third witness statement Mr Harding refers to the power to issue a stop notice under s.183 of the 1990 Act. Section 183(4) says that a stop notice may not "prohibit the use of any building as a dwelling house". He says at para.23:

> "Whilst the hotel is being used as a hostel, it is may be akin to a dwelling, given that the occupants use the hostel as their only "home"."

On that basis Mr Harding suggests that the local authority may not have the power to issue a stop notice and that this strengthens the case for the court to grant an injunction under s. 187B. In my judgment it does not.

65 What is a "dwelling" for the purposes of planning legislation is well-established. It has been considered in a number of authorities, including *Rectory Homes Limited v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 143. The term "dwelling" in planning legislation refers to a unit of residential accommodation which provides the facilities needed for day-to-day private domestic existence (see the headnote of the law report and [53]). It is obvious that a hotel bedroom without a kitchen or cooking facilities does not provide facilities necessary for day-to-day domestic existence and is not a dwelling.

66 For all these reasons, I conclude that the application for an interim injunction must be refused.

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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