Neutral Citation Number: [2025] EWHC 321 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Case No: KB-2024-003281

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 February 2025

Before:

His Honour Judge Tariq Sadiq
(Sitting as a High Court Judge)

Between:

SURREY HEATH BOROUGH COUNCIL

Claimant

- v -

(1) THE OWNER OF THE LAND ON THE EAST SIDE OF MYTSTROU ("D1");
(2) CENTAUR ESTATES LTD ("D2"); AND
(3) ANATOLY BELNIK ("D3")

Defendants

Caroline Bolton (Instructed by Surrey Heath Borough Council) appeared on behalf of the Claimant
Mark Westmoreland Smith KC (Instructed via Direct Public Access) appeared on behalf of the Defendants

Hearing date: 5 February 2025

APPROVED JUDGMENT

This judgment was handed down at 10.30am on 14 February 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

His Honour Judge Tariq Sadiq (sitting as a High Court Judge)

Introduction

1. This is the Claimant's application for a final injunction against the Defendants. It relates to breaches of planning control and building control. An interim injunction against the Defendants was granted on 14 October 2024 following a hearing on 11 October 2024. The application for a final injunction broadly claims the same relief granted by the interim injunction.

2. The key factual matrix is agreed. The Defendants accept there have been breaches of planning and building control. Accordingly, the Court proceeds on the assumption that breaches of the building and planning control exist. The seriousness of the breaches is disputed, and the Defendants contend that in all the circumstances it is not just to grant the relief sought. The Claimant was represented by Miss Carolin Bolton, Counsel. The Defendants were represented by Mr Mark Westmoreland Smith KC, Leading Counsel.

3. Mr Westmoreland Smith KC confirmed that the Defendants do not rely on the witness statement of the Third Defendant, but that he had no objection to me reading it and taking it into account. The parties agreed that I should proceed on the basis of submissions only without the need to call oral evidence from the Claimant. Mr Westmoreland Smith KC confirmed that he had very little cross-examination of the Claimant's witnesses and that the key factual matrix was agreed. Accordingly, the court agreed to proceed on this basis.

4. I was referred to the Claimant's bundle running to approximately 572 pages, and the Defendant's bundle of approximately 171 pages.

Background

5. The claim relates to Land on the East Site of Mytstrou, Salisbury Terrace, Mytchett, Camberley, Surrey, GU16 6DB ("the Property"). It is also known as the Laurels. It is a residential dwelling. The Property originally formed part of the same land holding as Mytstrou (which is owned by the Third Defendant). The ownership of Mytstrou was divided and the Property transferred on 26 May 2023 to the Second Defendant. The Third Defendant is the owner and sole director of the Second Defendant.

The Planning History

6. By decision letter dated 4 December 2020, the Claimant granted planning permission to the Third Defendant for development at the Property comprising the *"Erection of a part two storey, part single storey front side and rear extension along with front and rear dormers at the Property"* ("the Planning Permission"). Planning permission was granted for an extension to Mytstrou, not for a separate dwelling.

7. A number of conditions were attached to the Planning Permission. Condition 2 required the proposed development to be built in accordance with specified plans including the proposed ground floor plan (Drawing: 0527A-00-SP Rev 04). That plan shows a door providing access between Mytstrou and the Property. The Defendants accept that this link door has not been constructed. Condition 5 prevents boundary treatments being erected

or provided within the rear garden of the host dwelling. The Defendants accept in breach of this condition that a fence has been constructed between the two properties.

8. It is further accepted that planning permission is required to sub-divide the dwelling at Mytstrou into two separate properties, which would amount to a material change of use falling within the definition of the development under section 55 of the Town and Country Planning Act 1990 ("the 1990 Act"). Planning permission is required for development by virtue of section 57 of the 1990 Act and that the relevant planning permission has not been obtained.

The Stop Notice

9. On 1 July 2024 the Council served a Stop Notice, dated 28 June 2024, on the Second and Third Defendants pursuant to section 35C(1)(c) of the Building Act 1984 ("the 1984 Act"). The reasons for issuing the Stop Notice was given as:

> "It appears to the Council that a contravention of building regulations is likely/has occurred, which may give rise to a risk of serious harm, and you must remedy this before continuing any further with the building work.
>
> The council has reason to believe that the erection of the three-storey extension/dwelling at the Property is to be occupied imminently. The Council considers that the means of escape provision is insufficient for a three-storey extension/dwelling, creating a risk of serious harm to person(s) in the event of a fire.
>
> The unauthorised fire strategy poses a risk that people will be unable to escape to a place of safety from the Property, and serious injury or death to individuals in the event of a fire.

10. The contravention was described at paragraph 4 of the Stop Notice as follows:

> "This Stop Notice relates to the contravention of Schedule 1, Requirement B1 of the Building Regulations 2010. Specifically, the works appear to contravene the requirements for:
>
> - Appropriate means of escape in case of fire from the building to a place of safety outside the building capable of being safely and effectively used at all material times.
>
> The lack of a recognised method of means of escape from a three-storey extension/ dwelling presents a clear and present danger of serious harm to occupants."

11. Paragraph 5 identified the activity which must stop:

> "The occupation of the extension area (also known at [sic] Laurels) at the Property by any person(s) is prohibited until the contraventions outlined in Section 4 of this Notice have been remedied."

12. On 14 October 2024, the Defendants appealed the Stop Notice under section 39A of the 1984 Act, 12 weeks out of time. At a Preliminary Hearing on 13 November 2024, the court decided that the appeal was out of time and struck out the appeal. On 17 December 2024, permission to appeal against that decision was refused by the First Tier Tribunal Property Chamber (Residential Property). There was no further application for permission to appeal to the Upper Tribunal (Lands Chamber).

13. Under the same proceedings, the Third Defendant sought a determination under section 24(2) of the 1984 Act of a dispute with the Claimant as to whether the ingress/ egress/ circulation routes at the Property are satisfactory and made an application under section 78(7)(a) of the Act for a determination as to whether the Claimant was justified in exercising its powers under section 78 of the Act and for an award of compensation. These aspects of the proceedings were not struck out and are due to be heard on 14 March 2025 by the First-Tier Tribunal Property Chamber (Residential Property).

14. On 16 July 2024 the Third Defendant made an application to the Claimant under section 8 of the 1984 Act to relax or dispense with requirements under Buildings Regulations, which was refused on the same day by the Claimant. The Third Defendant appealed this decision on 19 July 2024 under section 39 of the 1984 Act and this appeal is outstanding.

<u>The Injunction Proceedings</u>

15. On 9 September 2024, the Claimant sought an injunction on the basis that the *"occupation of the extension is imminent, necessitating this application for injunctive relief"* pursuant to section 187B of the 1990 Act and section 36(6) of the Building Act 1984. Section 222(1) of the Local Government Act 1972 was also relied upon in the Claimant's 'Further Details of Claim'.

16. On 14 October 2024 an interim injunction was granted by the High Court following a hearing on 11 October 2024.

17. Paragraph 1 of the interim injunction provides:

> "The Defendants are hereby forbidden, in relation to the land on the East Side of Mystrou, Salisbury Terrace, Mytchett, Camberley, Surrey, GU16 6DB as indicated by the red edged line on the attached plan comprising the land registered under HM Land Registry Title SY335734 ('the Property'), immediately upon service of this Order, whether by themselves or by instructing, encouraging or permitting and other person, from:
>
> i) Occupying the three-storey extension constructed on the Property until the breaches outlined in the Stop Notice dated 1 July 2024 are fully remedied to the Claimant's satisfaction. This satisfaction shall be determined by a final inspection conducted by the Claimant's Building Control officers, who will verify that all necessary remedial works have been completed in accordance with the relevant building regulations.
>
> ii) Undertaking any further construction works on the extension until the breaches outlined in the Stop Notice dated 1 July 2024 are fully

remedied to the Claimant's satisfaction except for such construction works agreed by the Claimant in writing to be necessary to remedy the breaches outlined in the Stop Notice.

iii) Using or permitting the use of the extension as a separate, self-contained, dwelling. The Defendant is required to revert the development to that which was granted planning permission in 2020 (ref. 20/0138/FFU), ensuring the extension is used as an ancillary part of the existing dwelling at Mystrou."

18. There are effectively two parts to the interim injunction. Paragraphs 1i) and ii) above relates to the alleged breach of the Building Regulations ("the Building Regulations Injunction"). Paragraphs 1iii) concerns the alleged breach of planning control ("the Planning Control Injunction").

19. Shortly before the hearing I was provided with a revised draft order from the Claimant. There are two changes from the interim order. First, the adding of the HM Property Title SY895602 relating to Mystrou. Second, there has been a re-ordering of the paragraph numbers regarding the terms of the injunction order. Otherwise, the relief sought by the Claimant is the same as that contained in the interim order.

20. On 1 November 2024 the Second and Third Defendants applied to set aside or vary the interim injunction made. This application was dismissed by the High Court on 21 November 2024. There was no appeal against that decision.

Occupation of the Property

21. It is alleged that on 11 June 2024, Mr David Atkins moved into the Property under an Assured Shorthold Tenancy. This was before the Stop Notice was served on 1 July 2024. On 14 October 2024 the interim injunction was granted which was served on Mr Atkins on 21 October 024. There is a section 21 Notice under the Housing Act 1988 in the Defendant's bundle which purports to require Mr Atkins to move out of the Property within two months. The notice period would have expired on 21 December 2024. It is suggested that Mr Atkins moved out prior to this although the precise date is not known. It is alleged that he moved into temporary accommodation. The Property currently is unoccupied.

The Legal Framework

22. The relevant law is uncontroversial and not in dispute.

The Planning Injunction

23. Section 55(1) of the Town and Country Planning Act 1990 ('the 1990 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).

24. Section 57(1) of the 1990 Act provides that "planning permission is required for the carrying out of any development of land." Section 171A provides that "carrying out development without the required panning permission" is a breach of planning control.

25. Section 172(1) provides that a local planning authority ('LPA') may issue an Enforcement Notice "where it appears to them that – (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."

26. Section 174(1) provides for the right of appeal to the Secretary of State against an Enforcement Notice. The grounds of appeal are set out in section 174(2). They include that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged (section 174(2)(a) and that the matters stated in the notice do not constitute a breach of planning control (section 174(2)(d)).

27. Where an appeal is brought under section 174, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal (section 174(4)).

28. It is an offence under section 179 to fail to comply with an enforcement notice.

29. Section 187B of the 1990 Act provides:

> "(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
>
> (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach."

30. 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."

31. The leading authority on section 187B of the 1990 Act is South *Bucks DC v Porter (No.1)* [2003] 2 A.C. 558 at [27]-[38] (per Lord Bingham of Cornhill). In summary:

    (i) The court's jurisdiction under s.187B is original, not supervisory [27];

    (ii) It is open to a defendant to resist the application on conventional judicial review grounds or on other grounds [27];

    (iii) The court has a discretionary power to grant an injunction under s187B and underlining the court's jurisdiction is s37(1) of the Supreme Court Act namely "in all cases in which it appears to the court to be just and convenient to do so" [28];

(iv) However, the court's discretion is not unfettered and the discretion must be exercised judicially. In this context, the power must be exercised with due regard to the purpose for which the power was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. In all cases the court must decide whether in all the circumstances it is just to grant the relief sought against the particular Defendant [29];

(v) The court is not entitled reach its own independent view of the planning merits of the case. Issues of planning policy and judgment are within the exclusive purview of local planning authorities and the Secretary of State, but the court is not precluded from entertaining issues not related to planning policy or judgment [30];

(vi) The extent to which the planning authority has considered the defendant's personal circumstances and nonetheless resolved it is necessary to seek relief is a material factor, and will ordinarily weight heavily in favour of granting relief, since the court must accord respect to the balance which the local planning authority has truck between public and private interests [31]);

(vii) Ultimately, it is for the court to decide whether the remedy sought is just and proportionate in all the circumstances [31];

(viii) When granting an injunction, the court does not contemplate that it will be disobeyed. Apprehension that a party may disobey an order should not deter the court from aiming an otherwise appropriate order. When making an order, the court should be willing to enforce it if necessary. The court should ordinarily be slow to make an order which, if necessary, it would need to enforce by imprisonment. But in this context imprisonment is intended not to punish but to induce compliance, reinforcing the requirement that the order be one with which the defendant can and reasonably ought to comply [32].

32. Lord Bingham of Cornhill endorsed (at [20] and [38) the judgement of Lord Justice Simon Brown in the Court of Appeal judgment ([2001] 1 WLR 1359 at [38]-[42]) in which he said:

> "38. I would unhesitatingly reject the more extreme submissions made on either side. It seems to me perfectly clear that the judge on a s.187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J suggested was the case in the pre-1998 Act era, "entirely foreclosed" at the injunction stage. Questions of the family's health and education will inevitably be of

relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.

39. Relevant too will be the local authority's decision under s.187B(1) to seek injunctive relief. They, after all, are the democratically elected and accountable body principally responsible for planning control in their area. Again, however, the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

40. Whilst it is not for the court to question the correctness of the existing planning status of the land, the court in deciding whether or not to grant an injunction (and, if so, whether and for how long to suspend it) is bound to come to some broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end. In this regard the court need not shut its mind to the possibility of the planning authority itself coming to reach a different planning judgment in the case.

41. True it is, as Mr McCracken points out, that, once the planning decision is taken as final, the legitimate aim of preserving the environment is only achievable by removing the gipsies from site. That is not to say, however, that the achievement of that aim must always be accepted by the court to outweigh whatever countervailing rights the gipsies may have, still less that the court is bound to grant injunctive (least of all immediate injunctive) relief. Rather I prefer the approach suggested by the 1991 Circular: the court's discretion is absolute and injunctive relief is unlikely unless properly thought to be “commensurate” — in today's language, proportionate. The Hambleton approach seems to me difficult to reconcile with that Circular. However, whatever view one takes of the correctness of the Hambleton approach in the period prior to the coming into force of

> the Human Rights Act 1998, to my mind it cannot be thought consistent with the court's duty under s.6(1) to act compatibly with convention rights. Proportionality requires not only that the injunction be appropriate and necessary for the attainment of the public interest objective sought — here the safeguarding of the environment — but also that it does not impose an excessive burden on the individual whose private interests — here the gipsy's private life and home and the retention of his ethnic identity — are at stake.
>
> 42. I do not pretend that it will always be easy in any particular case to strike the necessary balance between these competing interests, interests of so different a character that weighing one against the other must inevitably be problematic. This, however, is the task to be undertaken by the court and, provided it is undertaken in a structured and articulated way, the appropriate conclusion should emerge."

The Building Regulations Injunction

33. Section 35C of the 1984 Act is entitled "Stop Notices" and provides so far as relevant:

> "(1) The building control authority may give a stop notice to a person appearing to the authority to be in control of any work if it appears to the authority that –
>
> (a) the carrying out of the work would contravene a provision of building regulations prescribed for the purposes of this paragraph,
> (b) a compliance notice relating to the work has been contravened, or
> (c) the work contravenes a provision of building regulations or a requirement imposed by virtue of such a provision, and the risk of serious harm condition is met.
>
> (2) For the purposes of subsection (1)(c) the "risk of serious harm condition" is that use of the building in question without the contravention having been remedied would be likely to present a risk of serious harm to people in or about the building.
>
> (3) A "stop notice" is a notice prohibiting, either immediately or from a specified time, the carrying out of specified work until the occurrence of such of the following as may be specified— (a) the taking of specified steps; (b) the occurrence of specified circumstances; (c) the remedying of a specified contravention or the matters giving rise to it."

34. Subsections (4) to (6) make it an offence to contravene a stop notice. Subsection (7) provides that "*specified*" in section 35C means specified in the stop notice.

35. Section 36 of the 1984 Act allows a building control authority to apply for an injunction for the removal or alteration of works that contravene the Building Regulations. Section 36(6) provides:

> "(6) This section, and sections 35B and 35C, do not affect the right of a building control authority…to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any regulation or any provision of this Act; but if—
>
> (a) an application for building control approval was made to the local authority in respect of the work,
>
> (b) the application was granted,
>
> (c) the work was executed in accordance with—
>
> (i) the plans approved by the granting of the application, and
> (ii) any requirement imposed by the authority, and
>
> (d) the work was not higher-risk building work,
>
> the court on granting an injunction has power to order the local authority to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court shall in accordance with rules of court cause the local authority, if not a party to the proceedings, to be joined as a party to them."

36. Section 39, "Appeal against refusal etc. to relax building regulations", provides so far as relevant:

> "(1) If a building control authority refuse an application to dispense with or relax a requirement in building regulations that they have power to dispense with or relax, the applicant may by notice in writing appeal within one month from the date on which the building control authority notify the applicant of their refusal.
>
> (1A) The appeal is to be made to— (a) the regulator, in the case of a refusal by a local authority for an area in England;…"

37. Section 39A, "Appeals against compliance notices and stop notices etc", provides so far as material:

> "(5) A person to whom a stop notice has been given may appeal to the appropriate court or tribunal.
>
> (6) Where an appeal under subsection (5) is made—
>
> (a) the appellant may apply to the appropriate court or tribunal for a direction that the stop notice is of no effect pending the final determination or withdrawal of the appeal, and
> (b) unless and until any such direction is given, the stop notice continues to have effect despite the making of the appeal."

38. Schedule 1, Part B of the Building Regulations provides at B1 that ("B1"):

> "The building shall be designed and constructed so that there are appropriate provisions for the early warning of fire, and appropriate means of escape in case of fire from the building to a place of safety outside the building capable of being safely and effectively used at all material times."

39. To comply with B1 a building must comply with recognised guidance on compliance or Approved Document B, Volume 1: Dwellings ("Approved Document B") under the heading "*Escape from upper storeys a maximum of 4.5m above ground level*" requires at paragraph 2.2, where served by only one stairway, all habitable rooms (excluding kitchens) to have either an emergency escape window or external door or direct access to a protected stairway.

40. A protected stairway (see paragraph 2.5a of Approved Document B)" is a stairway separated by fire resisting construction at all storeys and must either extend to a final exit or give access to a minimum of two ground level final exits that are separated from each other by fire resisting construction and fire doors.

41. Similar requirements are set out in BS 9991:2015, Fire safety in the design, management and use of residential buildings – Code of practice.

42. An alternative approach to compliance with Schedule 1, Part B of the Building Regulations 2010 would be to submit a bespoke engineered solution under BS 7974: 2019, Application of fire safety engineering principles to the design of buildings ("the Fire Safety Engineering BS").

43. Section 222 of the Local Government Act 1972 provides:

> "(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of the area –
>
> (a) They may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and
> (b) They may, in their own name, make a representation in the interests of the inhabitants ay any public inquiry held by or on behalf of any Minister or public body under any enactment."

44. Section 222 does not of itself create a cause of action. It confers on local authorities the power to bring proceedings to enforce obedience in public law, without the involvement of the Attorney General.

45. The leading authority on the exercise of the court's discretion under s222 is *City of London Corporation v Bovis Construction Ltd* [1992] 3 All ER 697 at [714] (per Lord Bingham of Conrnhall).

Decision

46. It is accepted that there have been actual breaches of planning and building control. The issue is whether it is just in all the circumstances to grant to the injunction sought against the Defendants. I have considered all of the available evidence, read the relevant legislation

and case law referred to and taken into account the submissions of the parties. Balancing the competing factors, it is just in all the circumstances to grant the injunction sought, subject to certain specific matters which I identify later in my judgement.

47. I deal first of all with the planning control injunction. Planning permission was clearly granted for an extension of Mytsrou, not a separate dwelling which has been created. It is also not in dispute that the division of a single dwelling into two constitutes a material change of use which requires planning permission under section 57(1) of the 1990 act. The creation of a single dwelling and the material change of use represents, in my judgement, a serious and flagrant breach of patent planning control which needs to be remedied.

48. It plainly gives rise to a significant risk of environmental damage. I am entitled to take a broad view of the degree of environmental damage resulting from the breach – see [40] of the Court of Appeal decision in *Porter*. No expert evidence is required for me to make this broad assessment. On the basis of the evidence before me, I am satisfied that the risk of environmental damage resulting from the breach of planning control is significant. The Property which it is accepted is a separate dwelling, is located within 400 metres of the Thames Basin Health Special Protection Area ('TBHSPA'). This is not permitted for the reasons given by Mr Duncan Carty in his witness statement of paragraphs 4.1 to 6.2, which I accept. The TBHSPA is also a Special Area of Conservation and Site of Special Scientific Interest and is also a Natura 2000 site, part of a network of nature protection areas established from 1992 within the European Union made up of Special Areas of Conservation and Special Protection Areas under the Habitats Directive and Wild Birds Directive. This level of protection extends to certain threatened species of wild birds, their eggs, nests and habitats. In addition, Condition 5 of the planning permission makes it very clear that no boundary treatments will be permitted within the rear garden of Mytsrou so as to permit the subdivision of the rear garden to facilitate the separation of the extension into a separate dwelling. One of the main reasons for this condition was to preserve the integrity of the TBHSPA.

49. I reject the Defendants submission that the impact on the TBHSPA only arises on occupation and since the Property is unoccupied the court should not grant the relief claimed. The Property which was built as a separate dwelling still represents a net new residential development within 400 meters of the TBHSPA. Further, the Defendants allowed residential occupation of the Property to continue, even after service of the Stop Notice prohibiting its use. Occupation of the Property only ceased once it was prohibited by the interim injunction in October 2024. Compliance with an injunction order is not of itself grounds for refusing to grant a final injunction in any event – see *S v Poole Borough Council* [2002] EWHC 244, Admin, at [19]. The court expects interim injunctions to be obeyed once made. The interim injunction application was necessary because the Defendants were in serious breach of planning control. The Defendants still have not rectified the serious breaches of planning control. A final injunction does not prevent the Defendants from making a further planning application to rectify the breaches of planning control.

50. Although residential occupation has, for now, ceased, the Claimant is right to be concerned that there is also an apprehended breach of planning control in the form of the potential for future residential occupation of the Property. In his witness statement the tenant Mr Atkins does not suggest that he left the Property because the Third Defendant had served a section 21 notice under the Housing Act 1988. A section 21 notice can be used to evict a tenant after a fixed term tenancy has ended or during a tenancy with no fixed end date namely a

periodic tenancy. Here, the tenancy was for a one year fixed term which did not expire until 11 June 2025. The Defendants could not terminate the tenancy within six months, nor could they serve a section 21 notice within the first six months of the tenancy. There is no evidence when the notice was served in any event. Moreover, the precise date when the tenant left the property is unknown. Further, the Defendants ignored the Stop Notice and nothing short of an inunction has prevented the Defendants from letting the Property.

51. The deviation from the approved plans is not minor. It is significant. The Defendants have built not an extension but a single dwelling and the division of that single dwelling into two constitutes a material change of use which needs to be but has not been remedied. It plainly gives rise to a significant risk of environmental harm. Further, there are breaches of building control in particular unacceptable fire safety risks: see further at [54] below. The Defendants still have not rectified the breaches of the approved plans namely the missing hinge door and removal of fencing in any event.

52. The Planning Injunction was not pursued because of mere administrative convenience. The main reason was because in breach of planning control the Defendants had built a single dwelling, not an extension of Mytstrou within 400 meters of the TBHSPA. This, I find, was a serious and flagrant breach of planning control. I accept paragraphs 3.5 to 3.7 and 4.1 to 5.7 of Mr Duncan Carty's first witness statement. Mr Westmoreland Smith's reliance on paragraph 13 of Mr Partridge's witness statement, does not represent the complete picture which I must take into account. Breaches of planning control was the basis for the High Court granting paragraphs 1(iii) of the interim injunction in October 2024. The Defendant's application to vary and/or set aside that order was dismissed on 21 November 2024 and there was no appeal against that decision.

53. As regards the lack of enforcement action taken by the Claimant, the Claimant is not obliged to take enforcement action against the Defendants. In any event, I accept the Claimant's explanation why no enforcement action was taken in this case. Enforcement action can take a significant amount of time to bring a planning breach to an end. This was recognised at [13] of *Porter* which highlights the delays inherent in a process of application, refusal, appeal, continued user, enforcement notice, appeal, the possibility of repeated applications, curbed but not eliminated by section 70A of the 1990 Act and the opportunities for prefabrication and obstruction which the system offers. Here, there was a need to protect environmental harm from occupation – see [38] of *Porter*, and there was a risk of probable non-compliance by the Defendants which is a factor I take into account – see Mr Partridge's witness statement at paragraph 21. As stated above, there is nothing preventing the Defendants from making a further planning application rectifying the breaches.

54. Regarding the Building Regulations Injunction, the breaches of building control are set out in the witness statement of Mr Lawrence Stonehouse and Mr Kevin Williams for the Claimant, which I accept. They refer to the unacceptable fire safety risks created by the development of the Property - see paragraphs 4.1 to 4.6 of Mr Lawrence's witness statement, in particular that:

    (i) The Defendants have constructed a three-story independent dwelling with a single staircase that discharges directly into the kitchen on the ground floor level;

    (ii) The bottom of the staircase does not have a protected escape route to a final exit;

(iii) The staircase is not separated from the upper floors by fire resistant construction;

(iv) At the first-floor level, the upper floors of staircase are not separated from the ground floor by fire resisting construction, and

(v) As a result of the above, there is a very real risk of life or of serious injury – see paragraph 4.6 of Mr Stonehouse's witness statement.

55. A Stop Notice was served pursuant to section 35C of the Building Act 1984 on 1 July 2024 prohibiting occupation of the Property until the Defendants had remedied the breaches specified in the Stop Notice. The Stop Notice was ignored by the Defendants who continued to rent out the Property for residential use. Accordingly, the Claimant sought an interim injunction which was granted.

56. As regards the validity of the Stop Notice, the Defendant's appeal against the Stop Notice was struck out for being out of time on 13 November 2024. Permission to appeal was refused by the First-Tier Tribunal on 17 December 2024. There was no further application for permission to appeal to the Upper Tribunal. On 21 November 2024 the Defendant's application to vary or set aside the interim injunction order was dismissed. Mr Westmoreland Smith KC for the Defendants accepted that the Stop Notice remains in place. In these circumstances, in my judgment the validity of the Stop Notice cannot be challenged.

57. I also reject the Defendants contention that the Building Regulations Injunction is flawed. The Defendant's application to vary or set aside the interim injunction order was dismissed on 21 November 2024 by the High Court and there has been no appeal against that decision. The Building Regulations Injunction was not predicated on the Stop Notice. It was based on the serious breaches of planning and building control and the immediate and unacceptable risk to public safety – see the Claim Form.

58. Further, section 36(6) of the Building Act 1984 gives the local authority the right to apply for an injunction for the removal or alteration of any work on the ground that it contravenes the Building Regulations. The Building Regulations Injunction seeks to prevent occupation and further construction works until the Defendants have fully remedied the breaches set out in the Stop Notice. The breach specified in the Stop Notice is the lack of appropriate means of escape in case of fire, in breach of Schedule 1, B1 of the Building Regulations 2010 namely the failure to provide an appropriate means of escape in case of fire from the building. Sections 35C(3)(a) and/or (c) which is the risk of serious harm condition are engaged here. Occupation of the Property comes within section 35C(2) which for the purposes of subsection (1)(c) the "risk of serious harm condition" refers to the <u>use</u> of the building in question without the contravention having been remedied would be likely to present a risk of serious harm to people in or about the building [my underlining]. The photos provided by the Defendants and the fact of tenancy does not mean that the works had been completed.

59. The breach of building control is also, in my judgment, a serious and flagrant breach. Further, the Defendants ignored the Stop Notice. They continued letting the Property to a tenant despite the lack of appropriate means of fire escape from the Property. The

Defendants only ceased letting the Property after the Claimant had obtained the interim injunction on 14 October 2024.

60. Despite the Third Defendant offering certain undertakings in Mr Westmoreland Smith's skeleton argument, in his witness statement dated 21 October 2024 which is signed by Statement of Truth, the Third Defendant has disputed any breach of planning control and/or building control.

61. As regards the Defendants personal circumstances, no personal circumstances are advanced by the Defendant to be weighed in the balance against granting the relief sought. The Property is not any of the Defendants' home and there are no Article 8 ECHR rights to consider; certainly none that have been advanced. In any event, any hardship is extremely limited. This is not a case where the Defendants, or anyone else, is currently occupying the land. In any event, there is no evidence before this court adduced by the Defendants of what, if any, hardship would actually flow from the grant of an injunction save for the potential of imprisonment. Regarding imprisonment, injunction orders should be obeyed, not disobeyed. In light of the serious and wilful breaches of planning and building control, imprisonment is justified to prevent further breaches.

Conclusion

62. Standing back, in my judgment, the injunctive relief claimed is just in all the circumstances. As set out above, the need to enforce planning and building control in the public interest is a relevant consideration. Here, there are flagrant breaches of both planning and building control. Residential occupation was allowed to continue in breach of a Stop Notice. The merits of the planning decision are not for the court. The environmental risks are significant. The private interests in play in the case before me are limited. An injunction is necessary to prevent further harm from occurring and to address the harm which has occurred.

63. For the reasons given above, I will grant the final injunction claimed until the breaches are remedied.

64. I am grateful to Counsel who have prepared and agreed a draft order which reflects my judgment, which includes an agreement regarding the Claimant's costs.