

ENGLAND AND WALES / JUDGMENT

Wealden District Council v John David Devall & Anor

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Neutral Citation Number: [2025] EWHC 2809 (KB) Case No: KB-- 2025-001314 IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION Royal Courts of Justice Strand, London, WC2A 2LL
Date: 29 th October 2025 Before : KIRSTY BRIMELOW KC sitting as a Deputy Judge of the High Court

- ----- Between : WEALDEN DISTRICT COUNCIL Claimant

- and –

(1) JOHN DAVID DEVALL Defendant

(2) SALLY ANNE WATSON

- -----

- ----- Mark O'Brien O'Reilly (instructed by Sharpe Pritchard LLP) for the Claimants The Defendants did not appear and were not represented Hearing dates: 21 and 22 October 2025 Approved Judgment This judgment was handed down remotely at 2pm on 29th October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. DHCJ Brimelow KC:

INTRODUCTION

1. This is an application by the Claimant for a final injunction, with both restraining and mandatory elements. The claim relates to land on the north side of Old Forge Lane, Horney Common, Uckfield TN22 3EL (“the Land”). The Claimant
2. The Claimant, Wealden District Council, is the Local Planning Authority (“the LPA”). The Defendants
3. The Defendants, Mr. Devall and Ms. Watson are the private holders of the Land since 6 February 2024, and it is recorded on the Land Registry that they paid £20,000 for the Land on 19 January 2024.

4. Subsequent to the purchase the Defendants instructed a Planning Agent to seek pre-application advice in relation to a proposal to establish a residence on the Land. The Senior Planning Officer indicated that it would be unlikely to gain Officer support and concluded that planning permission would be required. He provided details of the process to apply for planning permission.
5. Ms. Watson attended one hearing during these proceedings, on 25 April 2025. On 9 May 2025, Ms. Watson wrote a letter to the Claimant setting out representations to the Court. There was a telephone call between the Claimant and Ms Watson on 25 September 2025.
6. Ms. Watson sent a further email to the Claimant on 6 October 2025 where she indicated that she will not attend the final hearing in person due to the pressure and stress caused by the proceedings. Finally, she emailed the Claimant on 20 October requesting that her resistance to a costs application be communicated to the court. It was in reply to an email from the Claimant referring to the hearing on 21 October 2025 and attaching a statement of costs, further to postal delivery. In her response, Ms. Watson referred to the negative impact a costs order would have on her and her family.
7. The First Defendant has never communicated his position directly to either the Claimant or the court. However, Ms. Watson confirmed at the hearing on 25 April 2025, that she is his partner and that she lives with him along with their children. The email address used by Ms. Watson also contains both Defendants' names. Time also was given during the proceedings, on the 19th of May, to ensure that Mr. Devall was informed. 8. Whilst I will refer primarily to Ms. Watson, I am satisfied that Mr. Devall is fully informed of the proceedings and that Ms. Watson is representing his position, namely resistance to the Claimant's application. Ms. Watson, put forward his position in representations at the 25 April hearing, namely that he used the barn to store his tree surgery equipment. I am satisfied that Mr. Devall has chosen not to engage personally in the proceedings. The Injunction Area
9. The Land comprises 0.14 hectares and faces Old Forge Lane close to the junction with the A22 in Horney Common, Uckfield. A residential property is located to the west with agricultural land located to the north and east of the Land.
10. The Land lies within the High Weald National Landscape Area, formerly known as Areas of Outstanding Natural Beauty, and within 400 metres of the Ashdown Forest Special Protection Area. There is an exclusion zone of 400 metres for net increases in dwellings in order to contribute to the LPA's biodiversity targets.
11. Planning permission was refused in 1979 and 1989 for residential development on the Land. Of note was a visit by the LPA to the Land in September 2020 following complaints relating to unauthorised works to create an access track.

12. A meeting took place with the previous owner's son on the Land on 22 September 2020, and I have considered photographs from that visit which are helpful as to the appearance of the Land. The Land was being used to store logs and timber, which the LPA considered to be a non-agricultural use. As a result of discussions, by 1 June 2021, the previous owner had restored the track back as close to its former condition as was acceptable to the LPA, so that it did not pursue further action. The Land then remained unused.
13. On 6 February 2024 the Land was sold to the Defendants. Completion of the Registration was on 20 May 2024. Around two weeks later, a pre-application submission was submitted on behalf of the First Defendant and responded to by the Claimant on 4 June 2024. The Cases of the Claimant and the Defendants
14. The proposal, as summarised by an LPA Senior Planning Officer, consisted of "the demolition of the site's existing barn and the erection of a timber dwelling house in the style of a log cabin." Niall Mileman provided five statements on behalf of the LPA, as one of their Senior Planning Officers. He stated that the proposal was for the "establishment of timber log style cabin with ancillary living space within derelict existing barn type structure."
15. The Claimant advised that the proposed development would be unlikely to be given Planning Officer support due to its location within a 7 Km buffer zone of a Special Area of Conservation and potential negative visual impacts on the landscape beauty of High Weald National Landscape. Mr. Mileman, in his first statement dated 15 April 2025, stated the location of the site also is within 400 metres of the Ashdown Forest Protection Area and a residential use of the site would not be considered acceptable.
16. On 30 July 2024 there was an anonymous call to the LPA complaining of works on the Land. On 8 August 2024, the Claimant wrote to the Defendants, requesting information about works, at the address that was on the Land Registry, namely a Gypsy/Travellers' site in East Sussex. However, it transpired that this was not the address of the Defendants and that there remains an application at the Land Registry to change the address, pending from 6 June 2024. This application had been submitted by a solicitor who also was based in East Sussex. Ms. Watson, in her letter in these proceedings, dated 9 May 2025 stated that the Land Registry address was an error by the solicitor handling the Land purchase. Therefore, there was no response to the Claimant's letter.
17. On 9 October 2024 the LPA visited the site and Mr. Mileman states that "it was noted that the existing track on the site had been significantly improved, and new fencing and gate had been introduced".
18. However, the LPA concluded that the fencing and the gate constituted "permitted development" and the improvement works to the track potentially also was "permitted development" under Schedule 2, Part 9 Class A and E, respectively, of Town and Country Planning (General Permitted Development) Order 2015. No further action was taken.

19. Matters did not end there. On the 1st and 2nd of April 2024, local residents contacted the LPA with concerns about further works on the Land. These included the demolition and rebuild of the derelict barn, the creation of a large area of hardstanding adjacent to the barn, a possible dog kennel and the connection of utilities. Mr. Mileman visited the site on 4 April 2025 and observed that the barn had been rebuilt, there was hardstanding and also a small shelter, agreed to be a dog kennel. There was a lawn area and laurel hedging giving the appearance of a garden and also new slightly raised base was under construction. There also was a sign on the gate, "Natures Promise" and a coil of water pipe. At some stage, a letter box for receipt of mail had been affixed on the fence next to the gate.
20. The Claimant wrote to the Gypsy/Travellers' site address the same day purportedly to the Defendants, requesting a meeting. During the final hearing, it was accepted by the Mr. O'Brien O'Reilly that the letter would not have been received as the Defendants did not live at that address. The detail is developed below. There was no reply.
21. On 7 April 2025, The Claimant emailed the East Sussex County Council Traveller Liaison Team and also spoke to them. They advised that there was no record of the Defendants at the Gypsy/Travellers' site. They considered photographs of the works on the Land and communicated that the LPA may experience "problems at the site soon" and advised the Claimant to contact the East Sussex Police Rural Crimes Team. On 8 April 2025 the Claimant contacted the Police. In summary the Police agreed with the concerns of the LPA and gave their view that the hardstanding was ready for a residential unit. The Police already were aware of the Land.
22. It was against this background that the Claimant made an application for an urgent without notice injunction which was granted on 16 April 2025. The injunction restrained the Defendants from carrying out development on the Land in breach of planning control and listed prohibited activities including laying or forming concrete bases, erecting any buildings or shelters and using any part of the Land for residential occupation.
23. The injunction was posted near the Land on 17 April 2025. On 22 April 2025, Ms. Watson contacted the LPA and told Mr. Mileman that she had received the injunction and was having difficulties with the timeline in the directions. She asked why she had not received letters before the injunction and confirmed in conversation that she did not live at the address recorded on the Land Registry. Ms. Watson attended court on 25th April 2025 and made representations. She confirmed that she lived at an address in West Sussex with Mr. Devall and their children. On that date, the hearing was adjourned, and the interim injunction order was further extended with a return date of the week of the 19th of May 2025. There was a direction for the Defendants to file any evidence by 9 May 2025.
24. On 9 May 2025, Ms. Watson wrote a letter, addressed to a Judge, respectfully apologising that she would be unable to attend the hearing. She set out that she had found the previous hearing stressful and that it had taken a "serious toll" on her health. She stated that she was unable to afford legal representation and requested that the injunction be discharged.

25. She stated that the LPA placed “highly restrictive limitations on the use of the land” and argued that the barn was restored rather than rebuilt, using the original brickwork and footings. She described that where the original material was unsafe, they were replaced with “like-for-like materials”. Further, she argued that the raised hardstanding already existed and had been cleared rather than added to the Land. Ms. Watson also stated that upon clearing the Land they discovered the derelict barn and the raised hardstanding. Ms. Watson referred back to Mr. Mileman’s email to the Rural Crime Team, on 8 April 2025, where he said that “there are only minor breaches of planning control occurring on site at the present time.”
26. However, in the letter, she volunteered to remove the dog kennel. Subsequently, this was carried out. Further, she pointed to the LPA’s concerns that the Land was being prepared for an unauthorised Gypsy/Traveller site as “both unfounded and discriminatory”. She said that “we have no such intentions, and it is upsetting to feel that we are being treated unfairly because of our background”.
27. Ms. Watson also produced photographs of the state of the Land before their works. It has the appearance of wasteland with discarded logs, a section of hardstanding and a derelict barn with a red corrugated iron exterior. The barn is clearly visible.
28. The Claimant relies on evidence from Mr. Mileman that the works on the barn, namely removal of bricks from the base of the original barn for cleaning before reuse, replacement of timber and new corrugated iron and door is a development as set out in section 55(2) of the Town and Country Planning Act 1990. In summary, the appearance of the barn is materially different in that it now is green in colour. Further the window above the barn is different to previously and the door is different, constructed in light wood.
29. In relation to the hardstanding, Mr. Mileman states that he refers to the entirety of the hardstanding which included an area surfaced with tarmac planings as well as extended raised hardstanding. As to the pre-existing hardstanding, Mr. Mileman points to photographs taken on 20 September 2020 which show an absence of hardstanding for part of the area. Further, they rely on a Google Earth photograph taken of the Land on 20 May 2024 which appears to show only bare earth and no hardstanding at all. Mr. Mileman states that hardstanding is in breach of planning control. He also points to the hardstanding expansion, letter box, naming of the property, attempted laying on of domestic water supply (although it was cancelled) and development of a garden as evidence of the Defendants’ intention to use the Land for residential occupation. The Claimant points to the development happening in the face of advice that a planning application was required.
30. On 19 May 2025, the Defendants did not attend the hearing, and it was adjourned with a further return date of 15 June 2025. The Deputy High Court Judge required satisfaction that the Second Defendant knew of the proceedings. The injunction remained in place. The final interim injunction order was on 12 June 2025. Directions were made for the service of evidence, including that the Defendants filed evidence by 30 September 2025. The same day,

copies of the sealed interim injunction Order were affixed to the entrance to the Land and also put in the letter box, as well as sent to the Defendants by email.

31. On 26 August 2025, the Claimant received an email and photographs from “a concerned party” suggesting that a water supply had been connected to the Land by Southeast Water. The Claimant contacted Southeast Water who responded on 9 September 2025 by way of an email detailing the works that had been carried out or were to be carried out, namely “installation of 1 x 25 mm household connection for new build coming off a 90 mm HPPE water main located in Old Forge Lane.”
32. The Claimant wrote to the Defendants on 9 September 2025, and a conversation took place by telephone with Ms. Watson on 15 September 2025. Mr. Mileman states that she said, “that she had called Southeast Water to cancel the works” to provide “drinking water to the site after service of the Injunction Order” and that “she had received a refund from them and so assumed the works had been cancelled”. This was confirmed by Southeast water. It appears that they decided to proactively install a communication pipe in the highway, in any event.
33. Mr. Mileman visited the Land on 24 September 2025 and noted vegetal growth and the removal of the dog kennel. I’ve considered the photographs, and the Land clearly is overgrown with plants growing up through the hardstanding. Chronology of Proceedings
34. An interim injunction was granted against the Defendants and Persons Unknown on an urgent without notice basis by Mrs Justice Cheema-Grubb on 16 April 2025 following a hearing on the same date. It prevented them from carrying out development on the Land. The first return date hearing took place before Mr Justice Freedman on 25 April 2025. Ms. Watson attended in person.
35. That hearing was adjourned to allow the Defendants to provide evidence by 9 May
2025. The further return date hearing was listed on 19 May 2025. That hearing was adjourned by the Deputy High Court Judge who had concerns about whether the First Defendant was aware of the proceedings. Ms. Watson provided a letter, dated 9 May
2025. The Deputy High Court Judge made directions allowing further evidence to be filed and served and continued the interim injunction. He set out the words of a statement of truth required to be attached to any evidence relied upon by the Defendants, inviting that the letter be turned into evidence.
36. The next hearing on 12 June 2025 was not attended by the Defendants, and the interim injunction was continued until the conclusion of this hearing or, if judgment was reserved, until the hand down of judgment. He made directions for the exchange of evidence in preparation for this hearing. The date of the hearing of 21 October 2025 was fixed on 7 July 2025, and the Claimant sent an email to Ms. Watson on 25 September reminding her of the final hearing date and requesting service of any evidence relied upon by the Defendants.

37. There were two emails from Ms Watson, dated 6 October and 20 October, together with the letter of 9 May 2025. They are not in evidential form, with no declaration of truth. However, I have taken them fully into account during this hearing and in consideration of my decision. The Final Hearing
38. At this hearing, the Claimant seeks a full injunction with both mandatory and prohibitory elements. The prohibitory elements of the Order are to restrain the Defendants from carrying out any further operational development on the Land and from using the Land in breach of planning control.
39. The mandatory elements seek the demolition of the barn, the removal of any hardstanding material laid by the Defendants (as opposed to preexisting) and removal of any tools or equipment placed on the Land in connection with the First Defendant's tree surgery business and removal of rubbish, waste, rubble generated by the unlawful development of the Land and/or created by the compliance with the mandatory steps in the Order.
40. During the hearing, the Claimant has narrowed its application for an indefinite restraining part of the injunction Order to a time limitation of ten years.
41. The case proceeded in the absence of the Defendants as I am satisfied that both have had the opportunity to attend and have taken decisions not to do so. There has been no application for more time, and the Defendants have been in possession of the Claimant's application and evidence over a six-month period. Neither of the Defendants have served evidence, including failing to add a statement of truth to representations, as directed by the Court. Ultimately, balancing the background to the hearing, including the opportunities given to the Defendants to file evidence and to attend in person, to the public interest in proceeding and the interests of the Claimant, I am satisfied that it is just for the case to proceed in the absence of the Defendants. The Defendants appeared to raise all the arguments they wished to raise, and scrutiny was given to each point made by Ms. Watson in her correspondence. The Claimant has responded to Ms. Watson's arguments, and she has had the opportunity to reply further but, save as to costs, has not chosen to do so. LEGAL PRINCIPLES Statutory framework
42. 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".
43. The underlying cause of action in a claim brought under s.187B of the Town and Country Planning Act 1990 ("the Act") is a breach of planning control.
44. Section 187B (1) of the Act provides that: "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".

45. 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”.
46. The Town and Country Planning Act 1990 at section 55(1) defines development as “...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”
47. Section 55(1A) of the Act provides that “For the purposes of this Act “building operations” includes — (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder”.
48. Section 55(2) of the Act sets out which operations or uses of land shall not be taken to involve development of land. Those include, as per section 55(2)(a), “the carrying out for the maintenance, improvement or other alteration of any building of works which—(i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, ...”.
49. Section 55(2)(e) of the Act provides that “the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used” does not constitute development of land.
50. Section 336(1) defines “agriculture” as including “horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly”.
51. Section 57(1) of the Act provides that “planning permission is required for the carrying out of any development of land”.
52. Section 171A of the Act provides that “carrying out development without the required planning permission” is a breach of planning control.
53. For the benefit of the Defendants, I set out that the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”) contains permitted development rights where planning permission has been granted by the GPDO (see sections 58(1) and 60(1) of the Act). Those are contained in Schedule Two of the GPDO.

54. Part 6 of Schedule Two relates to agricultural and forestry. Class B relates to agricultural development on units of less than 5 hectares. Class B authorises “The carrying out on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area, of development consisting of...(a) the extension or alteration of an agricultural building (e) the provision of a hard surface...where the development is reasonably necessary for the purposes of agriculture within the unit”.
55. Paragraph B.1 sets out the circumstances in which development is not permitted by Class B. Those include where “the external appearance of the premises would be materially affected” (paragraph B.1(b)). Paragraph B.2(a) is also clear that “Development is not permitted by Class B (a) if – (a) the height of any building would be increased...”.
56. Paragraph B.5 imposes, as a condition on that grant of planning permission, a requirement that “Where development is permitted by Class B(a), within 7 days of the date on which the development is substantially completed, the developer must notify the local planning authority in writing of that fact”. Case law on section 187B
57. *South Buckinghamshire District Council v Porter & Others* [2003] 2 A. C. 558 (“South Bucks”) is authority for the following propositions: (i) (ii) (iii) S.187B confers on the court an original and discretionary, not a supervisory, jurisdiction, to be exercised with due regard to the purpose for which it was conferred, to restrain actual or threatened breaches of planning control; It was inherent in the injunctive remedy that its grant depended on the court's judgement of all the circumstances of the case; Although the court would not examine matters of planning policy and judgment (which lay within the exclusive purview of the authorities responsible for administering the planning regime), the court was not obliged to grant relief because a planning authority considered it necessary or expedient to restrain a planning breach; and (iv) The court would have regard to all, including the personal, circumstances of the case, was required by s.6 Human Rights Act 1998 to act compatibly with Convention rights, and, having regard to the right guaranteed in article 8 ECHR, the court would only grant an injunction where it was just and proportionate to do so.
58. Therefore, whilst the court's power to grant an injunction under the Town and Country Planning Act 1990 s187B is discretionary, that discretion must be exercised judicially. In *Porter* at paragraph 29 and relevant to this context, Lord Bingham said as follows: “...that the power must be exercised with due regard to the purpose for which it 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.”
59. In *Ipswich Borough Council v Fairview Hotels (Ipswich) Limited* [2022] EWHC 2868 (KB) (“*Ipswich*”), at paragraph 88, Holgate J held that: “An LPA cannot exercise the power to apply for an injunction under s.187B unless they consider it “necessary or expedient” to restrain a breach of planning control by injunction. Based on the clear language of the statute, it was common ground that the Claimants in this case had to be satisfied not only that it was necessary or expedient to take enforcement action...but also that it was necessary or

expedient to do so in this particular way, by seeking an injunction, rather than by other methods of enforcement”.

60. Holgate J quoted, with approval, at paragraph 93 of Ipswich, the principles set out in South Bucks as to the grant of permanent injunctions. He set out the following principles and guidance from that judgment: i) ii) iii) iv) The need to enforce planning control in the general interest is a relevant consideration and in that context the planning history of the site may be important. The “degree and flagrancy” of the breach of planning may be critical. Where conventional enforcement measures have failed over a prolonged period the Court may be more ready to grant an injunction. The Court may be more reluctant where enforcement action has never been taken; On the other hand, there might be urgency in the situation sufficient to justify the avoidance of an anticipated breach of planning control; An anticipatory interim injunction may sometimes be preferable to a delayed permanent injunction, for example, where stopping a gypsy moving on to a site in the first place, may involve less hardship than moving him out after a long period of occupation; While it is not for the Court to question the correctness of planning decisions which have been taken (e.g. decisions to refuse a planning permission or to dismiss an appeal), the Court should come to a broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end; The achievement of the legitimate aim of preserving the environment does not always outweigh countervailing rights (or factors). Injunctive relief is unlikely to be granted unless it is a “commensurate” remedy is the circumstances of the case; It is the court’s task to strike the balance between competing interests, weighing one against the other. v) vi)
61. Holgate J quoted, at paragraph 94 of Ipswich, the comments of Lord Bingham in South Bucks where it was said that: “The jurisdiction of the court under section 187B is an original, not a supervisory, jurisdiction” and that “The court’s power to grant an injunction under section 187B is a discretionary power. The permissive “may” in subsection (2) applies not only to the terms of any injunction the court may grant but also to the decision whether it should grant any injunction. It is indeed inherent in the concept of an injunction in English law that it is a remedy that the court may but need not grant, depending on its judgment of all the circumstances” (paragraph 27 of South Bucks).
62. It was also said at paragraph 29 of South Bucks that: “The discretion of the Court under section 187B, like every other judicial discretion, must be exercised judicially. That means, in this context, that 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..... Where it appears that a breach or apprehended breach will continue or occur unless and until effectively restrained by the law and that nothing short of an injunction will provide effective restraint..., that will point strongly towards the grant of an injunction.”

63. Whilst a history of unsuccessful enforcement will provide strength to the application for an injunction, the judgment also is clear that the local planning authority need not have exercised other enforcement powers.
64. Lord Scott at paragraph 99 of *South Bucks* held that: “Of particular importance, of course, will be whether or not the local planning authority can establish not only that there is a current or apprehended breach of planning control but also that the ordinary statutory means of enforcement are not likely to be effective in preventing the breach or bringing it to an end. In a case in which the statutory procedure of enforcement notice, prosecution for non-compliance and exercise by the authority of such statutory self-help remedies as are available had not been tried and where there was no sufficient reason to assume that, if tried, they would not succeed in dealing with the breach, the local planning authority would be unlikely to succeed in persuading the court that the grant of an injunction would be just and convenient”.
65. Lord Scott also said that: “The hardship likely to be caused to a defendant by the grant of an injunction to enforce the public law will always, in my opinion, be relevant to the court’s decision whether or not to grant the injunction. In many, perhaps most, cases the hardship prayed in aid by the defendant will be of insufficient weight to counterbalance a continued and persistent disobedience to the law. There is a strong general public interest that planning controls should be observed and, if not observed, enforced. But each case must depend upon its own circumstances” (paragraph 102).
66. I also was referred to the case of *Vale of White Horse District Council v Winter* [2022] EWHC 2313 (QB), where the High Court, at paragraph 18, held that the effect of the jurisprudence was that: “since [a] injunction is a discretionary form of relief, I must not only be satisfied that the defendants have breached planning law but also that, in all of the circumstances, it is proportionate and just for the court to grant an injunction taking into account, amongst other things, the impact that such an injunction will have on the defendants”. The Decision
67. Planning permission is required to carry out any development of the Land (section 55(1) and section 57 (1) of the Act). Rebuilding constitutes building operations and development for which planning permission is required (section 55(1A)). Taking the Defendants arguments that these works were carried out to improve the unsafe, derelict barn, I note that improvement will also constitute development where it materially affects the external appearance of a building, pursuant to section 55(2)(a) of the Act.
68. Comparing the photographs, the barn is materially different in external appearance to the original barn in that the doors are visibly different, a light wood, and the window above the door is of a different size and shape. Further the green coloured corrugated sheeting and construction itself, described by Mr. Mileman as rebuilt to “an inappropriately high specification,” materially affects the external appearance of the barn.

69. The Defendants do not address the change of colour or the different doors but argue in the generality. They may have attempted to repair a derelict barn. However, they also had received advice that, in order to proceed without planning permission, the original building needed to be capable of conversion without the need for significant modification or building operations. Ms. Watson states that the barn was restored rather than rebuilt. However, she accepts that new material was used, and it was obviously used for the exterior, including sides and the roof, the doors and the window. I accept the evidence of Mr. Mileman that it was a breach of planning control.
70. In relation to the hardstanding, Ms. Watson argues that “the raised hardstanding had also long existed” and that the evidence demonstrates that it is of some “age”.
71. Section 171B of the Act provides that “Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of— (a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed...”.
72. That ten-year rule applies from 25 April 2024 by virtue of the Levelling Up and Regeneration Act 2023; prior to that date the time limit for operational development was four years. The transitional arrangements provide, however, that where the operational development was substantially completed prior to 25 April 2024, it is the four-year period which applies (see regulation five of the Planning Act 2008 (Commencement No. 8) and Levelling-Up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024).
73. It seems that Ms. Watson considers the hardstanding to have existed prior to 25 April 2024 and so the four-year rule would apply.
74. The LPA accepts that some hardstanding was on the Land at the time of the pre- application request. The LPA’s case also relates to the area surfaced with tarmac planings, in front of and around the barn, separate from the access track. Also, the Claimant points to an additional part of the raised hard standing that did not exist on 22 September 2020. However, they accept that the additional section might have been added by the previous owners.
75. The Defendants could have made an application to the LPA for a certificate of lawful existing development and chose not to do so. Whilst the Defendants might consider that they improved the appearance of the barn and the Land and object to constraint on their use of the Land, planning control is in place to protect the environment for the benefit of all.
76. I find that the hardstanding, including the tarmac planings, to the extent that it was laid by the Defendants, was an operational development under section 55 of the Act and therefore in breach of planning control. Flagrancy of breach

77. In deciding whether to grant the injunction, the “degree and flagrancy” of the breach of planning may be critical. Ms. Watson points to Mr. Mileman having described the breaches as “minor” in his email to the police. During the hearing, the Claimant stated that Mr. Mileman had meant that each individual breach was minor and that cumulatively they were not.
78. Whilst this interpretation may be difficult to reach from a plain reading of the email, it is not Mr. Mileman’s evidence - hence the initial action for a without notice injunction.
79. In any event, it is for the court to consider the combined works, together with other evidence, such as the payment for a water supply, noted by Southeast Water to be to supply a “new build”, rather than water for agricultural purposes, the letter box, the laying of a lawn/ garden and the naming of the Land together with the limited explanation from the Defendants as to their plans.
80. They had submitted a request for pre-application advice for the erection of a dwelling house in the style of a log cabin. It was clear from the advice that an application for full planning permission was required. Indeed, the location of the Land is significant as it is inside the Special Area of Conservation, protected by a 7 km buffer zone. It also is within 400 metres of the Ashdown Forest Special Protection area. It is an “area of environmental sensitivity” (Ipswich).
81. However, in under two months, the Defendants started their development. There has been no explanation from the Defendants as to the reason for the hard standing, including both tarmac planings and extended raised hardstanding. I understand from Mr. O’Brien O’Reilly at the final hearing that Ms. Watson, at the hearing she attended, said that the barn was to be used for storage of tree surgery equipment and the Land was for use with their children-playing football. I have not been supplied with photographs of the inside of the barn. There is no mention in her letter or emails that the barn would be used for tree surgery tools. However, if it was being used for the storage of tree surgery equipment, I accept Mr. Mileman’s evidence that it would not be an agricultural use of the Land nor ancillary or incidental to the agricultural use of the Land. The LPA took a consistent approach with the previous owners of the Land when they were storing logs on the Land.
82. I have considered the lack of previous enforcement measures by the LPA. However, I find that the LPA was justified in applying for an injunction application to prevent anticipated residence. It was entitled to draw on its experience that these works were preparatory to residential occupation of the Land and to take note of corresponding concerns from other institutions. Whilst there has been no application for planning permission, ultimately, I must decide whether it is appropriate to grant the LPA final injunctive relief.

83. Whilst the Defendants might consider that they have improved the appearance of the Land, what uses should or should not be made of Land is a matter for the LPA and not for the courts. The planning judgment of the LPA takes into account social and economic needs of the community as well as environment preservation. I must consider the importance of the public interest in the enforcement of planning policy and planning decisions.
84. The LPA argue that there is harm in that the barn is a visible structure on the Land and is one that has been erected regardless of planning control, and in the knowledge that a planning application was required. The Defendants had access to a planning agent. Ms. Watson's points to the pre-application consultation as evidence that she had tried to act lawfully and that the Defendants intentions in the future are not to occupy or develop the Land unlawfully. Ms. Watson sets out that she considers that they are being treated unfairly because of their background. Whilst she is not explicit, it appears that she is referring to Gypsy/Traveller background. This is a serious consideration. The Claimants rejected this categorisation, pointing instead to the actions of the Defendants, intention as expressed in the pre-application advice and lack of explanation for use of the hardstanding to rebut the LPA's experience of its use for mobile homes/caravans.
85. Considering the evidence as a whole, including the actions of the Defendants shortly after the pre-application consultation, I am satisfied that the breach is deliberate and flagrant. It was in the face of the advice and information to apply for planning permission. Planning Harm
86. The Claimant argues that the harm of allowing the unauthorised developments to remain on the Land make the Land vulnerable to instant residence by caravans/mobile homes, whilst also reducing the area that can be used for agricultural purposes. There is a public interest in enforcing planning control. In consideration of the planning harm caused, and its nature and extent, I take account of the Defendants position that they are being unfairly treated. However, there has not been a planning application from the Defendants for the retention of the barn and/or the hardstanding. The works do give the Land the look of the laying of a residential premises rather than pursuing an agricultural purpose. The barn is clearly visible and Mr. Mileman's evidence is that it is out of keeping with the landscape and is ready to convert into harmful residential use. This damage of the appearance is heightened as it is in a protected landscape.
87. I take into account the evidence that any application for the use of the Land for a Gypsy/Traveller encampment/caravans is unlikely to succeed due to the location of the Land in an important conservation area. A single residence also would not receive planning support, as was clearly communicated to the Defendants. On a broad view, I find that there is planning harm. Proportionality of, and justification/need for, an injunction
88. I weigh up the distress expressed by Ms. Watson and damage to her mental health, that her enjoyment of the Land is being taken away from her by the LPA. She argues that this issue could have been sorted out without the need for an injunction, pointing to the start of the

issue being that they did not receive the correspondence. I must weigh up whether the LPA is being over-restrictive as to what she can do on her Land against 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” (paragraph 73 of South Bucks). The Claimant’s position, as expressed at the final hearing, was that it is up to the Defendants to approach it with any further proposals. It also indicated that it would express in any Order that the Defendants can enjoy the Land and use it recreationally where it is not a breach of planning control. I see that this is reflected in the Draft Order.

89. The injunction does not prevent any lawful activity on the Land which is not a breach of planning control. On the other hand, I am satisfied that an injunction is necessary to prevent further development for non-agricultural related purposes. In addition, the LPA has considered a lesser remedy, and its evidence is that an enforcement notice would not operate to remove existing works nor prevent residential occupation which, I accept from Mr. Mileman, could occur very rapidly, particularly over a Bank Holiday weekend. Rather, at its highest, an enforcement notice would result in a fine.
90. I also take into account Ms. Watson’s representations in writing that she had no intention in carrying out works to convert the Land into a place of residence. However, it is undisputed that their original desire had been to develop a residence. The works are works that may be needed for a residence. Further, there was a drinking water supply paid for (and then cancelled), a letter box and a naming of the Land.
91. I consider that the Defendants’ rights further to Article 8 (2) ECHR are engaged and there is interference with their private and family life. However, the interference is minimal. Any stress over legal proceedings and the feeling of being scrutinised should dissipate once the proceedings are completed. Ms. Watson considers that the LPA’s restrictions are extreme and will stop her from enjoying her land. However, she also expresses that “any future development or change of use will only be carried out through the appropriate planning application processes and in full cooperation with the council”. It does appear that since these proceedings commenced the LPA has ceased dialogue with the Defendants, save for transactional emails in relation to court directions. I would encourage dialogue to recommence, although the Claimant’s position is that the Defendants should approach them over their future plans.
92. It always is concerning to read of distress and anxiety caused to a person. However, I consider that the stress felt by Ms. Watson is outweighed by the public interest in enforcing planning control.

93. Ms. Watson has communicated that she is “afraid that any normal use of the land may be misinterpreted or criticised. This has greatly affected my mental health and left me feeling excluded from a place I legally own and care for.” It is not for the court to enter into the practicalities, but it might be that Ms. Watson consults again the planning agent and makes an application if she is concerned about future developments. It might be that a dialogue now can ensue with Mr. Mileman, who is seized of the detail about the Land and its history.
94. In relation to proprietary and commercial interests, the Claimant accept that there will be some interference with the Defendants’ Article 1 Protocol 1 rights but argues that this is justifiable, pointing to the breaches that already have occurred and the harm that would flow from anticipated breaches. I do not consider the terms of injunction sought, to return the Land to more or less the state before the unauthorised development to be unjustifiable, particularly as the Land is 400 metres from Ashdown Forest Special Protection Area.
95. Overall, the prejudice to the Defendants is minimal as the sought injunction will require the Defendants to comply with planning control and to remove the development that they have carried out without planning permission. I note that this objective appears to chime with Ms. Watson’s declared intention. There is no restriction on the lawful use of the Land.
96. An injunction is necessary to prevent further harm from occurring and to address the harm which has occurred. An injunction would, therefore, uphold the integrity of the planning system. I am satisfied that the evidence 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.
97. For these reasons, I will grant a final injunction, with both prohibitory and mandatory elements.
98. However, whilst the LPA application is for the restraining part of the injunction to be for 10 years, reduced from indefinite after I addressed the LPA on the issue during the final hearing, I consider that it is not proportionate in time. I weigh up the representations of Ms. Watson, that she wishes to enjoy the Land lawfully, with the public interest. I also consider that the removal of the hardstanding laid by the Defendants and the demolition of the barn will reduce the site back to not being ready for residential use. I therefore make the final injunction Order’s restraining part to be for a period of two years.
99. In relation to the mandatory part of the Order, the draft Order suggests that the Defendants have three months to comply. This timeline weighs in favour of the proportionality of the Order as the time allowed for compliance will minimise any hardship that might be caused to the Defendants. 100. I have heard representations on costs, including further representations on the costs schedule and the necessity for a grade A lawyer. I have considered the email from Ms. Watson where she states that the financial burden of costs would be extremely difficult. The general rule is that the “unsuccessful party” will be ordered to pay the costs of the “successful party” (CPR r.44.2(2)(a)). Financial hardship is not a reason not to award costs. However, in light of the number of hearings in this case, and the

final hearing lasting slightly over one day and attempts by Ms. Watson to engage with the LPA, I consider it appropriate for costs to be assessed. I therefore do not summarily assess them in the sum requested by the Claimant.

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