Case Name: *Epping Forest District Council v Somani Hotels Ltd* [2025] EWHC 2937 (KB) (11 November 2025)

Full case: *Read Here*

Commentary: This case concerned an application by Epping Forest District Council (**"the Claimant"**) for an injunction under section 187B of the Town and Country Planning Act 1990 (**"the 1990 Act"**) to restrain Somani Hotels Limited (**"the Defendant"**) from using the Bell Hotel in Epping to accommodate asylum seekers (**"the Injunction"**). The Claimant contends that the use of the Bell to accommodate asylum seekers was in breach of planning control because it constituted a material change of use from a hotel to a hostel. The Claimant also sought declaratory relief such that use of the Bell to provide accommodation for asylum seekers is not use as a hotel.

Mould J recalled the principles in ***South Bucks District Council v Porter*** [2003] 2 AC 558 (**"*South Bucks*"**) as to the exercise of the Court's powers conferred by section 187B of the 1990 Act (**"section 187B"**), and adopted four of the six principles and guidance set out by Holgate J in ***Ipswich Borough Council v Fairview Hotels Limited*** [2022] EWHC 2868 (KB); [2023] JPL 630 (**"*Ipswich*"**). The principles which Mould J applied were:

1. The need to enforce planning control, taking into account the "degree and flagrancy" of the postulated breach and whether any enforcement action has already been taken, is a relevant consideration;
2. The Court should come to a broad view as to the degree of environmental harm due to the breach and the urgency of bringing that breach to an end;
3. Countervailing factors should be weighed against achieving the legitimate aim of preserving the environment, considering that an injunction is unlikely to be granted where it is not thought to be a "commensurate remedy"; and
4. The Court should strike a balance between competing interests, weighing one against the other.

First, Mould J recalled that whilst the Claimant had considered, in all three periods where the Defendant used the Bell to accommodate asylum seekers, that the Defendant was in breach of planning control, the Claimant had not taken any enforcement action to restrain its use in this way. Also, Mould J noted that the Defendant had maintained the view that the temporary use of the Bell as contingency accommodation for asylum seekers was as a hotel and in line with Class C1 of schedule 1 to the Town and Country Planning (Use Classes) Order 1987. He rejected the submission by the Claimant that the Defendant was in "flagrant" breach of planning control.

Second, Mould J evaluated the alleged environmental harm caused by the use of the Bell as contingency accommodation for asylum seekers. Mould J considered the temporary installation of security fencing in response to protest, the fear of crime in relation to the use of the Bell to accommodate asylum seekers, and the rise in community tensions in

relation to the use of the Bell to accommodate asylum seekers. Mould J concluded that the resulting planning and environmental harm of the fencing was limited by its localised and temporary nature; that the degree of such harm resulting from the fear of crime was limited owing to the lack of established relationship with the use of the land itself; and that whilst it may be reasonable to seek to find a swift resolution to public disorder, such a solution did not lie in an application for an injunction under section 187B.

Third, countervailing factors weighed against the grant of an injunction. In particular, the continuing need to source contingency accommodation for asylum seekers to facilitate the discharge of the Home Secretary's statutory responsibilities under the Immigration and Asylum Act 1999 (**"the 1999 Act"**) was afforded significant weight. The financial impact of the Injunction on the Defendant was also considered to be countervailing factor which weighed against the grant of an injunction.

Striking a balance, Mould J refused to grant the Injunction, concluding that he was not persuaded that it was a commensurate remedy; although, he noted that it remains open to the Claimant to take enforcement action by issuing an enforcement notice.

Mould J also refused to grant the declaratory relief sought by the Claimant, remembering that there are statutory procedures under section 191 and 195 of the 1990 Act which enable the LPA, or by way of appeal, the Secretary of State, to determine whether the existing use of the land is lawful. Mould J noted that this was a "real possibility", and therefore deferred to the judgment of the Claimant as the local planning authority.

Discussion

Mould J remembered that in none of the three *South Bucks* cases was there a dispute as to the existence of a breach of planning control. This was clearly a point of contention between the Claimant and the Defendant, and there has been a long-standing dispute as to this issue. The Claimant asserts that the use of the Bell has changed from a hotel to a hostel, whereas the Defendant views that pursuant to the contractual arrangements between the Home Secretary and the provider of the contingency accommodation, the use of the Bell was as an "exclusive use hotel, not as a hostel". Mould J was ultimately prepared to accept that the Claimant, as the local planning authority (**"LPA"**), had a reasonable basis for alleging and asserting that by using the Bell as contingency accommodation, the Defendant was in breach of planning control.

The Claimant must also view that it is both necessary and expedient to apply for an injunction pursuant to section 187B. The trigger for the application for an injunction was the protests and their accompanying disorder and criminality. Those considerations emerged as the primary basis to apply for an injunction because the Legal Services Manager for the LPA, the decision-maker with the delegated authority who decided to

apply for an injunction, failed to prepare a contemporary record of the delegated decision explaining why it decided to apply for the Injunction, which the Claimant's Scheme of Delegation plainly required.

Mould J noted:

> "I have real concerns as to the propriety of the local planning authority's decision-making process. In particular, there was a clear breach of the procedural requirements of the Claimant's Scheme of Delegation in failing to prepare a contemporary record of the delegated decision to apply for an injunction." [284]

Planning Enforcement History and Flagrancy of Breach

There were three periods within which the Bell was used to accommodate asylum seekers. The claimant knew in each instance that the Bell was being used in this way. It asserted consistently that it viewed that this was in breach of planning control. Nonetheless, no enforcement action had been taken against the use of the Bell to accommodate asylum seekers; it could not be said that this was a case of last resort. In contrast to ***Great Yarmouth Borough Council v Al-Abdin*** [2022] EWHC 3476 (KB) at [35] and [67], it lay within the powers of the Claimant to take enforcement action but it decided not to do so. Taking the above into account, amongst other things, Mould J rejected the submission of the Claimant that the postulated breach of planning control was a flagrant one.

Planning and Environmental Harm

Mould J considered the temporary installation of the security fencing at the site. He noted that fencing was installed in response to protests, and not because of its use, in planning terms, as accommodation for asylum seekers. He viewed that any planning harm must also be judged against the fact that the use of the Bell in this way would likely cease in April 2026.

Central to the Claimant's case as to environmental harm, applying ***West Midlands Probation Committee v Secretary of State for the Environment*** (1998) 76 P&CR 589 (**"*West Midlands*"**), was that the community's fear or concern of crime had some real, reasonable basis, and related to the use, in planning terms, of the land. Whilst Mould J viewed that the fears and concerns of the community had a reasonable basis, namely by way of the arrest of three individuals accommodated at the Bell, he was:

> "… far from convinced that the actions of those individuals disclosed any pattern of criminal or anti-social behaviour which is characteristic of the use of hotels as contingency accommodation …" [254]

He explained that there was "no evidence" that such a use produces any such pattern of behaviour. Accordingly, Mould J concluded that the planning and environmental harm resulting from this "should not be overstated." [255]

The Claimant also sought to rely on community tensions which arose due to the use of the Bell to accommodate asylum seekers, which are reflected by the public protests which began on the 11 July 2025, and which are said to have had a detrimental effect on both the local community and the accommodated asylum seekers. Mould J concluded that the fact of such public protests should "not carry weight" with the LPA, nor override its planning judgment.

The Claimant previously made an application for an interim injunction to the High Court, which was granted by Eyre J on the 19 August 2025, and later overturned by the Court of Appeal on the 1 September 2025. Mould J adopted the reasoning of the Court of Appeal at [118] of its judgment, noting that if protests were to be treated as material to planning and environmental harm, then that might incentivise further protest, some of which may be disorderly or violent. Mould J considered that such control of public order is better dealt with by using the extensive powers under public order legislation, including section 14 of the Public Order Act 1986.

Countervailing Factors

Section 95 of the 1999 Act places a burden on the Home Secretary to provide accommodation and other support to asylum seekers, intended for those that are destitute. It is offered on a "no choice basis".

The Bell was used as contingency accommodation that typically needs to be procured urgently. This can limit the options open to the Home Secretary. Only 200 hotels remain in use for this purpose. Since the start of the COVID-19 Pandemic, the demand for asylum support and accommodation has significantly risen. Mould J concluded that it was "critical and necessary" for the Home secretary to be able to readily source safe and secure contingency accommodation like the Bell Hotel. He afforded this consideration "significant weight" when determining whether an injunction was a commensurate remedy. [291]

Mould J also considered that the financial impact of the Injunction on the Defendant was a countervailing factor. The contract with the provider of the accommodation for asylum seekers provided the Defendant with a "secure source of income from the use of the hotel" which was needed to bring the Bell back up to the "required standard for a branded hotel likely to attract guests". [282]

Striking a Balance

Mould J concluded:

> "I have reached the clear conclusion that this is not a case in which it is just and convenient for this court to grant an injunction … I have not been persuaded that an injunction is a commensurate response to that postulated breach of planning control."

He therefore refused to grant the Injunction.

Declaratory Relief

Mould J accepted that the Court is equipped with powers to determine questions of fact and degree, but considered that the Court is jurisdictionally limited to hearing a challenge to the validity of an appeal to the Secretary of State after the exercise of the Claimant's planning judgment. He remembered Lord Bingham in South Bucks at [30], where he said that a section 187B application does not constitute an invitation to the Court to exercise other powers under the 1990 Act.

Case summary prepared by Adam Choudhury