

Neutral Citation Number: [2023] EWHC 1076 (KB)

Case No: KB-2023-001503

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Rolls Building, Fetter Lane,  
London, EC4A 1NL

Date: 21 April 2023

**Before:**

**THE HONOURABLE MR JUSTICE WAKSMAN**

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**Between:**

**BRAINTREE DISTRICT COUNCIL**

**Claimant**

**- and -**

**(1) SECRETARY OF STATE FOR THE HOME OFFICE**

**(2) SECRETARY OF STATE FOR DEFENCE**

**Defendants**

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**MR WAYNE BEGLAN** (instructed by **Sharpe Pritchard LLP**) for the **Claimant**  
**MR PAUL BROWN KC, NICHOLAS GRANT** and **REBECCA SAGE** (instructed by  
**Government Legal Department**) for the **First Defendant**  
**MS JULIE ANDERSON KC** (instructed by **Governmentlegal.gov.uk**) for the **Second Defendant**

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**APPROVED JUDGMENT**

## **INTRODUCTION**

1. This is the final hearing of proceedings brought by Braintree District Council (“BDC”) against the Secretary of State for the Home Department (“SSHD”) and the Secretary of State for Defence (“SSD”) (collectively “the Defendants”), for injunctive relief pursuant to section 187B of the Town and Country Planning Act 1990 (“the Act”). There was originally an application for an interlocutory injunction within these proceedings but that fell away when this final hearing was listed on an expedited basis.
2. The injunction is to stop an apprehended breach of planning control on the part of the Defendants at a 6.5 hectare site (“the Site”) which forms part of a 322 hectare area of land in Essex known as RAF Wethersfield (“the Land”). The land is owned by the Ministry of Defence and is therefore Crown land. The Land is near but outside of the village of Wethersfield and seven miles north of the town of Braintree. It had previously been used as an airfield and by the Ministry of Defence Police, then the Essex Fire and Rescue Service and for other accommodation. The SSHD proposes to use the Site so as to provide accommodation for up to 1,700 male asylum seekers (“the Development”).

## **THE DEVELOPMENT**

3. The Development would entail the use of some existing barracks together with new modular units erected or brought onto the Site so as to provide the required accommodation. The present position on the ground, as it were, is that while preparatory surveys and work of that kind are being carried out, no construction work has started and is unlikely to start for another two weeks at least. Furthermore, the SSHD has undertaken to the court that it will not begin to bring any asylum seekers to the Site until 3 May 2023 or judgment is handed down (whichever is the sooner)
4. It is common ground that the Development would amount to a material change of use of the Site and therefore requires planning permission unless it is otherwise exempt from seeking such permission. BDC says that without planning permission, there is no other basis on which the Development can lawfully take place. Accordingly, it submits that there is an apprehended breach of planning control which the court has the power to stop under section 187B. It further says that on the facts of this case, the court should exercise its power to grant an injunction as it would be just and convenient to do so.
5. For their part, the Defendants make two overarching points. First, by operation of section 296A of the Act, BDC as a local planning authority (“LPA”) is not permitted to invoke section 187B in relation to anything done on Crown land, which the Site is. Accordingly, the court has no jurisdiction in relation to these proceedings and, indeed, they should be struck out, and an application to that effect has been made. I call this “the Jurisdiction Point”.

6. Second, the Defendants say that in any event, the Development is covered by a permitted development right conferred upon it by Class Q of Part 19 to Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, (“Class Q”). It is common ground that if the Development falls within Class Q, separate planning permission is not required and there can be no breach of planning control. If that is the case, there can be no substantive basis for injunctive relief and this claim would fail anyway on the merits irrespective of jurisdiction. I call this “the Class Q Point”.
7. For its part, BDC rejects both the Jurisdiction and the Class Q Points. I should add that if I resolve both of those points finally in favour of BDC, the Defendants accept that injunctive relief would follow. If I were not to dispose of the Class Q Point finally today, a more nuanced third question would arise as to whether injunctive relief would be just and convenient on the facts of this case.
8. In the event, this third point does not arise. That is because I intend to resolve both points finally in this judgment. Both sides have accepted that I should do so, not least because the Jurisdiction Point is a pure question of law and the Class Q Point does not essentially depend on questions of planning or other administrative judgment. BDC does contend that there are elements of planning judgment in the decision already made by BDC in relation to the Class Q Point, and the Defendants for their part contend that there are elements of planning judgment carried out by the SSHD. Both sides contend that I should defer to, or at least give weight to, such judgments but only as part of my final determination of the Class Q Point, and not so as to defer any such determination.

## **THE EVIDENCE**

9. For BDC, there are witness statements from Caroline Elias-Stephenson, Dan Gascoyne and Dominic Collins, all dated 28 March, together with three witness statements from Emma Goodings dated 29 March, 4 and 12 April and also a witness statement from Kim Mayo dated 29 March. For the Defendants, there is a witness statement from Oliver Banner on behalf of SSHD and from Andrew Moffat on behalf of the SSD, both dated 4 April.

## **BACKGROUND**

10. I take much of the background facts from Mr Banner’s witness statement and the exhibits thereto. These facts are not essentially in dispute. I should record that Mr Banner is a senior civil servant in the Home Office and has been since 2021, but has been a civil servant for 13 years. For the past two years he worked as the project director for the Home Office’s accommodation centres project and previously he had been one of the senior officials responsible for a project that established the Asylum Accommodation and Support Contracts (‘AASC’) and Advice, Issue Reporting and Eligibility (‘AIRE’) contract through which the Home Office discharges its statutory duties towards destitute asylum seekers. In his current role, he oversees the team responsible for supporting Home Office decisions relating to the use of the Land at RAF Wethersfield, in other words the Site, as accommodation for asylum seekers together with any necessary operational development.

11. I first of all go to his paragraph 11 which deals with the question of the duties on the part of the SSHD. None of this is in dispute. Under section 95 of the Immigration and Asylum Act 1999 (“the 1999 Act”) and regulation 5 of the Asylum Seekers (Reception Conditions) Regulations 2005, SSHD has a statutory responsibility to provide accommodation and other support to asylum seekers and their dependants who would otherwise be destitute.
12. Under section 98 of the 1999 Act, when read with regulation 5, if an asylum seeker or their dependant appears to be destitute or likely to be so while their application for support under section 95 is being considered, the SSHD must provide them with temporary support which includes accommodation. The statutory definition of destitute includes where a person does not have adequate accommodation or any means of obtaining it.
13. Previously, the way that the SSHD discharged its responsibilities was by providing immediate accommodation in an initial accommodation facility which was generally a multi-person, full-board hostel with food, toiletries and other assistance given. There are eight such accommodation locations across the UK, four of which have full-board facilities. Hotels were sometimes used but only as a short term contingency. Typically, the average person would remain in this accommodation for four to six weeks while their application for section 95 support was being considered and then, if eligible, they would go into longer term accommodation.
14. When support was granted under section 95, the asylum seekers were usually moved to longer term dispersal accommodation, generally in the form of self-catered flats and houses, with cash payments to meet essential living needs. Dispersal accommodation is located in around 200 local authorities across the UK. Once an asylum seeker’s claim for asylum is finally resolved, they are no longer eligible for section 95 support and they move out of that system, as it were. This would then leave space, in theory, for new asylum seekers coming into the system for whom support and accommodation had to be provided.
15. I now turn to some of the figures in relation to asylum seekers and accommodation given in Mr Banner’s witness statement. He says that the number of asylum seekers requiring accommodation has reached record levels. At the end of December 2022, Home Office statistics recorded over 105,522 asylum seekers who were being given accommodation and a subsistence allowance. This was over 25,785 more than the number of asylum seekers requiring accommodation in the previous year. This was the highest ever level on record and it represented a 120 % increase in the number of asylum seekers requiring accommodation since 31 March 2020. The closest numbers to the current peaks were back at the end of 2022 when there were 68,000 asylum seekers in accommodation.
16. The numbers have continued to rise. By the end of March of this year, it was estimated there were 109,000 asylum seekers in need of accommodation. The current modelling undertaken by the Home Office predicted that this demand will increase still further this year. Operational plans are currently based on scenarios of up to 56,000 asylum seekers arriving on small boats in 2023 which in turn would result in further growth and demand for asylum accommodation and a subsequent increase in the overall need for supported

accommodation. It is estimated that during the course of this year the number of asylum seekers in need of support will increase from 109,000 as at March 2023 to between 120,000 and 140,000..

17. He goes on to say in paragraph 17 that the current high levels of demand for asylum accommodation can be traced back to Covid-19. Before the pandemic, the numbers of those requiring support and accommodation had been increasing modestly at an average rate of 4,000 a year. The Home Office's published statistics at the end of March 2020 showed that 50,898 were in receipt of such support with 48,000 requiring accommodation. At the end of December 2020, 62,871 were in receipt of support, of whom 58,250 required accommodation. This represented a 21 % increase in demand. Apart from the increase in demand, the time taken to resolve or determine asylum claims had itself slowed. In other words, the time taken to deal with applications had increased as a result of Covid, in part because case workers and applicants were not always able to participate in the required interviews.
18. In March 2020, the Home Office introduced a temporary suspension of the obligation on the part of asylum seekers to leave the asylum accommodation once their claim had been finally determined. That suspension lasted until July 2021. This caused a reduction in turnover and therefore put added pressure on accommodation providers. There is presently still a backlog in determining asylum applications and the SSHD does not expect to see a significant reduction for at least the next twelve months.
19. Mr Banner says at paragraph 20 that there have been unprecedented levels of small boat arrivals since January 2021. In 2022 there were over 45,000 migrants identified as arriving this way up from 28,526 in 2021 and up from 8,466 in 2020 and less in the previous years. The upward trend in small boat arrivals was intensifying, compared to the same period in the preceding year. As at the end of February this year, small boat arrivals for the year, that is January and February of this year, was 2,953, already twice the level seen in the same period in 2022, (1,482). As at 28 March this year, the overall number of arrivals had grown to 3,750.
20. Almost all of those arriving in this way subsequently submitted an asylum claim and (relative to the asylum-seeking population) there is a higher than usual proportion of asylum seekers applying for asylum support as shown by the increase in the number of applications. In the year ending December 2022, the Home Office received 36,538 new applications for asylum support, including 34,304 applications under section 95 of the 1999 Act. In contrast, prior to Covid the annual applications were approximately 22,500 per annum.
21. There has been demand from other sources as well, because following the withdrawal of British and other forces in Afghanistan, the SSHD supported the cross-government effort in delivering Afghan Relocations and Assistance Policy and the Afghan Citizens' Resettlement Scheme as part of the UK's commitment to provide protection and settlement for up to 20,000 Afghan citizens in the long term. The evacuation from Kabul in August

2021 brought around 15,000 individuals to the UK and that was in addition to the approximately 2,000 who had arrived under the earlier Afghan scheme before the end of June of that year.

22. The Home Office has moved thousands of people into bridging hotels after they completed quarantine and currently 8,000 Afghan nationals are accommodated in bridging accommodation. This additional demand and competition for both emergency hotel accommodation and longer term accommodation further reduced the supply in the market and increased the challenges to the Home Office and its providers in sourcing suitable contingency premises for use for the asylum support system.

### **ASYLUM ACCOMMODATION CAPACITY**

23. In January 2022, a migrant processing facility was opened in Manston in Kent. It was intended as the main centre for housing cross channel asylum seekers. However, by the end of October last year it was severely overcrowded. There were 4,000 individuals there when its intended capacity was only 1,600. There were expressions of considerable public concern as a result. The position at Manston and the other factors noted above meant that further accommodation had to be found, in order for the SSHD not to be in breach of her duties under sections 95 and 98 of the 1999 Act. The Home Office refers to this further accommodation which needed to be found as “contingency” initial accommodation.
24. Prior to Manston, there was already contingency accommodation being provided by block-booking and paying for hotel rooms for particular periods, irrespective of whether they would all be occupied during the entirety of those periods, but after the overcrowding at Manston, the Home Office had to urgently spot book hotel rooms on a per room basis which could be released at short notice but which cost considerably more than block booking on a per room basis.
25. This exercise proved controversial with local authorities and in some cases those authorities sought injunctions against such use of hotels, again under section 187B but this time in relation to the hotels themselves. Such an injunction was refused by Holgate J in *Ipswich v Fairview* [2022] EWHC 2868. However, one was granted by the same judge in what he called the special circumstances of the case in *Great Yarmouth v Al-Abdin* [2022] EWHC 3476. In that case, Holgate J referred to the need to spot book because of the extreme urgency for accommodating large numbers of people under the 1999 Act. That was at 21 December 2022.
26. As the figures to which I have already referred show, the position has deteriorated further since then. Indeed, as at March 2023, Home Office internal figures show that approximately 51,000 supported asylum seekers were temporarily being accommodated in emergency initial or contingency accommodation awaiting a move to dispersal accommodation. Of the 51,000, over 48,000 individuals were currently accommodated in one of over 380 hotels at a cost of £6.2 million per day. In contrast, during the previous

accommodated population peak at the end of 2002, just over 12,000 people had been placed in short term emergency accommodation.

27. All of the above explains why the Home Office considered it necessary to explore the availability of more stable, though nonetheless temporary, accommodation so as to be able to continue to comply with its section 95 and 98 duties. That led to a focus on Ministry of Defence (‘MoD’) sites that were, or were about to be, decommissioned. This was taken forward in January of this year. A site selection process was undertaken with the assistance of property consultants.
28. A 27 January submission was sent to ministers requesting a decision to explore the use of specific MoD sites for the provision of accommodation. The submission noted the ongoing reliance on hotels for the provision of such accommodation with more than 45,000 asylum seekers and 8,900 Afghan refugees being accommodated in hotels at the time. The briefing highlighted three particular MoD sites out of an initial list of 176. They were at Bexhill, RAF Scampton and the Site. The latter was due for disposal in 2025. A previous proposal from the MoJ had been to locate a prison there but this was not taken forward. 1,100 beds could be found within the existing barracks with another 900 or so being accommodated in new modular units. The briefing recommended the use of the Site for single adult male asylum seekers. This recommendation was approved by the Minister for Immigration on 2 February.
29. At this point, Class Q comes into focus. That is because it was recognised by the SSHD that the new use of the Site would need planning permission if the proposed use was not permitted under one of the existing permitted development rights. At this point, therefore, I set out the relevant provisions of Class Q which states that the permitted development is:
- “Development by or on behalf of the Crown on Crown land for the purposes of—  
(a) preventing an emergency;  
(b) reducing, controlling or mitigating the effects of an emergency; or  
(c) taking other action in connection with an emergency.”
30. As to the interpretation of emergency, Q.2(1) states that for the purposes of Class Q, an emergency means:

“An event or situation which threatens serious damage to—  
(a) human welfare in a place in the United Kingdom;  
(b) the environment of a place in the United Kingdom; or  
(c) the security of the United Kingdom.”

Subparagraph Q.2(2) then says:

“For the purposes of sub-paragraph (1)(a) [that is damage to human welfare] an event or situation threatens damage to human welfare only if it involves, causes or may cause—  
(a) loss of human life;  
(b) human illness or injury; or  
(c) homelessness.”

I list for context the other categories: damage to property; disruption of a supply of money, food, water, energy or fuel; disruption of a system of communication; disruption of facilities for transport; or disruption of services relating to health.

31. Pausing there, I turn to the conditions which would attach to the use of a Class Q development right, set out at Q.1, which are these:

“(a) the developer must, as soon as practicable after commencing development, notify the local planning authority of that development; and

(b) on or before the expiry of twelve months beginning with the date on which the development began (i) any use of that land for a purpose of Class Q must cease and any buildings, plant, machinery, structures and erections permitted by Class Q must be removed; and, (ii) the Land is restored to its condition before the development took place, or to such other state as may be agreed in writing between the local planning authority and the developer .”

The stated conditions apply unless permission for the development has been granted by virtue of any provision of this schedule or an application under Part 3 of the Act. “The twelve month period, in my judgment, emphasises the temporary nature of the Class Q right. Indeed, originally it was for six months only. The site’s use could only be retained at the end of the twelve month period if by then separate planning permission had been obtained.

32. On 3 March, a further briefing to ministers proposed to use the Site and RAF Scampton but to comply with planning law, it was intended to use the emergency permitted development right contained in Class Q. It also stated the need to comply with the rules on Habitats Regulation Assessments and Environmental Impact Assessments. Nothing now turns on those requirements. That is because later , on 16 March, Natural England agreed with the SSD’s assessment that there were no likely significant effects from a habitats point of view. Similarly, on 24 March the Secretary of State for Levelling Up, Housing and Communities issued a screening direction to the effect that the Development was not likely to have significant effects on the environment.
33. On 13 March, the SSHD confirmed that she wished to proceed with the Development. On 23 March, a further submission was made, recommending undertaking the Development but ministers agreed not to progress any works until Class Q was in place. On 28 March, a further submission was sent noting the negative Habitats Regulations and Environment Impact Assessments and which provided a final form of emergency statement. The SSHD agreed to the recommendations in the submission on the same day.

### **THE EMERGENCY STATEMENT**

34. Although, as already noted, the application of Class Q, or not, to the Development is a matter ultimately for me. This is not a judicial review of the SSHD’s decision to adopt the emergency statement, if indeed it is a decision; but nonetheless it is worth looking at it. First of all, in the introduction, it refers to the record levels in the number of asylum

seekers requiring accommodation at a time when the Home Office is dealing with unprecedented new demand for accommodation from other refugees and migrant cohorts, such as those arriving under Afghanistan and Ukrainian relocation schemes. It notes that obtaining planning permission for new accommodation takes time, and as a consequence, the Home Office is unable to meet the immediate need for sufficient, adequate accommodation for asylum seekers.

35. As at March 2023, the Home Office is currently accommodating over 48,000 asylum seekers and over 8,000 Afghan refugees in temporary hotel accommodation at a total cost of over £7.2 million per day. That is not the same as the £6.2 million referred to by Mr Banner but either way these are very considerable daily sums.
36. The current scale and costs of hotel use, along with the limited supply of premises suitable for such use, means the continued growth of hotel usage is not sustainable. Costs are increasing and supply is reducing after the pandemic. So as to be able to move asylum seekers from hotel accommodation, and in the light of expected further growth in demand in this year and beyond, the Home Office must urgently secure additional temporary accommodation to ensure it can continue to meet its statutory duties towards asylum seekers who would otherwise be destitute.
37. The Home Office proposed to use the Sites as accommodation for destitute asylum seekers pursuant to sections 95 and 98 of the 1999 Act. In order to do so quickly enough to meet the emergency need for accommodation, the Home Office intends to rely on Class Q and it then says then that the statement is produced to explain why it is considered that an emergency exists as defined under the statute and how the Development would prevent an emergency, reduce, control and mitigate the effects of the emergency, and/or represent other action taken in connection with that emergency.
38. That is a summary of the SSHD's position. There then follow 17 pages of detail and analysis to support the view that all of this meets the requirements of Class Q. Reference is made to the figures and statistics showing an increase of 77% of asylum seekers given accommodation over the last two years with further record levels of growth expected in 2023, up to the figure of 120,000 to 140,000 this year to which I have already referred. It points out that contingency initial accommodation such as hotels was only ever intended as a short term mitigation while suitable, longer term accommodation was being found.
39. Reference was made to the increased number of asylum seekers needing accommodation in part due to the continued increase in numbers arriving by small boats. Reference was also made to the impact of Covid on turnover of asylum seekers going through the system. The problems at Manston are also referred to in detail. It noted damage to relations with many local authorities where contingent initial accommodation was used in hotels and the fact that the bridging accommodation needed for Afghan refugees was competing for emergency accommodation. While more long-term accommodation was being planned, it was expected that the present emergency and shortfall in dispersal accommodation would

intensify, in other words increase, before further new dispersal accommodation came on stream.

40. The case for Class Q as put in the emergency statement was that the use of the Site, and indeed the other two sites, would prevent a future emergency, mitigate the effect of an existing emergency and/or involve taking other action in connection with the emergency. The statement goes on to say, at paragraph 63, that this will be done by averting homelessness caused by destitution which would otherwise occur as many asylum seekers arrive without sufficient money to support themselves or to find appropriate accommodation in which to live. There is a statutory route available to asylum seekers to receive accommodation and support under sections 95 and 98 of the 1999 Act and the Home Office has a duty to ensure they are not left destitute.
41. The steps necessary to be taken for further long term accommodation to be provided would take time to come into effect and could not address the immediate accommodation requirement which the proposed development at RAF Wethersfield and Scampton would assist in meeting. The conclusion was that there was a statutory duty to accommodate the asylum seekers, the number of whom had reached record levels in combination with significant other pressures such as changing intake patterns and Covid. The Home Office is of the view there is an emergency within the meaning of Class Q which threatens serious damage to human welfare, in particular homelessness.
42. Availability of other mitigation, such as dispersal to local authorities and accommodation in hotels will not and cannot adequately address the emergency in the next twelve-month period as was evident from the situation at Manston, so development of the Site would prevent a future emergency, reduce and control the effects of an existing one and constitute other action in connection with an emergency. This will be part of the response to the emergency and will assist the Home Office in ensuring it can fulfil its statutory duties.
43. Those last paragraphs essentially summarise the case for the application of Class Q which has been made before me in the context of the facts I have recited above. Against that background, I now turn to the two issues before me: the Jurisdiction Point and the Class Q Point.

### **THE JURISDICTION POINT**

44. I should note at the outset, and as is clear from the background and the emergency statement, that at all times since the Development of the Site was mooted, the SSHD has proceeded on the basis that it was necessary for Development to fall within Class Q. It has never sought to hide behind, as it were, the Jurisdiction Point and pay no regard to the planning regime at all on the basis that ultimately court action could not be brought against it. Nonetheless, it remains the case that the Jurisdiction Point has been taken, unsurprisingly since it is a question of the court's jurisdiction. As it is logically prior to the Class Q Point, I will deal with it first.

45. The Defendants’ strike out application is founded on the contention that by reason of section 296A of the Act, this court has no jurisdiction to grant the injunction sought by BDC pursuant to section 187B, whether on a permanent or interlocutory basis. If that proposition is correct, there is then no foundation for the underlying claim here and that is because the only substantive relief claimed is the injunction.
46. Although, on a strike out application I could, and should, dismiss it if there is at least a real prospect that at trial it will be shown that section 296A does not bar the injunction claim, both sides sensibly agreed that I should determine the matter finally now. That is not simply because it is a discrete point of law which can be conveniently decided. It is also because there will be no further trial in any event; this hearing is now the trial.
47. At this stage, I should introduce some of the background provisions of the Act which are relevant to the debate about section 296A. First of all, section 57. Section 57(1) headed “Planning permission required for development” says:

“Subject to the following provisions, planning permission is required for the carrying out of any development of land.”

Section 171A is headed “Expressions used in connection with enforcement” and it says this:

“(1) For the purposes of this Act-

- (a) carrying out development without the required planning permission; or
- (b) failing to comply with any condition or limitation subject to which planning permission was granted constitutes a breach of planning control.

(2) For the purposes of this Act-

- (a) the issue of an enforcement notice (defined in section 172);
- (aa) or the issue of an enforcement warning notice (defined in section 173ZA); or
- (b) the service of a breach of condition notice (defined in section 187A) constitutes taking enforcement action.”

48. Then section 172 of the Act provides for a local planning authority to issue an enforcement notice where it appears to it there has been a breach of planning control and it is expedient to issue such a notice. Persons served with such a notice have a right of appeal. I would add here in addition, that section 102, which enables an LPA to issue an order to discontinue any particular use of land or to alter or remove buildings, while described as an order, obviously does not have the same consequences in the event of non-compliance that would follow if that order was a court order.

49. Section 187B, which is part of Part 8 of the Act headed “Enforcement” provides as follows:

“Injunctions restraining breaches of planning control.

(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.”

This provision was added to the Act by section 3 of the Planning and Compensation Act 1991, and came into force on 25 November 1991.

50. I then turn to section 296A itself. This is headed “Enforcement in relation to the Crown”. It says:

“(1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.

(2) A local planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.”

[I interpose here that consent has neither been given by, nor indeed sought from, the appropriate authority in this case:

“(3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.

(4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.

(5) A step taken for the purposes of enforcement includes—

(a) entering land;

(b) bringing proceedings;

(c) the making of an application; and

(6) A step taken for the purposes of enforcement does not include—

(a) service of a notice; or

(b) the making of an order (other than by a court).”

51. This provision was added to the Act by section 84(2) of the Planning and Compulsory Purchase Act 2004 but it only came into force on 7 June 2006. On that day, it entirely replaced the existing section 296. Both the new and old sections are within Part XIII of the Act which is concerned with the application of the Act to Crown land. The short point for determination is whether an application for an injunction under section 187B of the Act is caught by section 296A. The defendants say that it clearly is and BDC say that it clearly is not. There is no authority directly on the point.

52. By way of background, it is common ground that prior to the introduction of section 296A and other new provisions added to the Act at the same time, the extent to which the Crown was subject to the Act generally had changed. The basic rule, of course, is that as a matter of statutory interpretation the Crown is taken not itself to be subject to any legislation unless the legislation provides otherwise. However, section 292A(1) provides that the Act binds the Crown. That is then subject to the provisions that follow, including section 296A.
53. Before considering the actual language of section 296A, I think it is important to place it in context, in particular by reference to the provision it replaced, namely the previous section 296. Notwithstanding the absence there of a provision stating expressly that the Act bound the Crown, section 296 contained a set of provisions which allowed for certain steps to be taken, or prohibited steps from being taken, in relation to Crown land without the consent of the appropriate authority. In particular, section 296(2) provided as follows:
- “Except with the consent of the appropriate authority—  
(aa) in relation to land which for the time being is Crown land—  
(i) a planning obligation shall not be enforced by injunction; and  
(ii) the power to enter land conferred by section 106 shall not be exercised;
- [That is all concerned with section 106 agreements]
- (a) no order or notice shall be made, issued or served under any of the provisions of section 102, 103, 171C, 172, 173A, 183, 187A, 187B, 198, 199 or 215 or Schedule 9 or under any of those provisions as applied by any order or regulations made under Part VIII, in relation to land which for the time being is Crown land;
- (b) no interest in land which for the time being is Crown land shall be acquired compulsorily under Part IX.”
54. Thus, injunctive relief under section 187B against the Crown was specifically excluded. This part of section 296(2)(a) was added at the same time that section 187B was added to the Act. In other words, in enacting section 187B an immediate carve-out was made so far as Crown land was concerned. One can also see that the issue of an enforcement notice by the LPA had been excluded by section 296(2)(a). That is because of its reference to section 172 which is the section providing for the issue of enforcement notices. The action provided for by section 102 was also excluded.
55. When one compares section 296 with 296A, a number of observations can be made. First, the ability of an LPA to issue an enforcement notice is now expressly included in the statute, as is an order made by it (see section 296A(6)). Secondly, the treatment of what is and is not permitted is not now done by reference to specific sections of the Act. Rather, it is by reference to a characterisation of what is being done under the generic label of a “step for the purposes of enforcement in relation to Crown land” without the consent of the authority.
56. Against that background, I turn first to the meaning of the language of section 296A itself. Subsection (4) describes what a step taken for the purpose of enforcement is. It is anything

done in connection with the enforcement of anything required to be done or prohibited by or under the Act. Subsection (5) then says that this includes but is not limited to certain matters and then subsection (6) states positively what is not included and that is the service of an enforcement notice or a non-court made order from the LPA. As to the latter, it is to be remembered that this is the power to make an order conferred by section 102 which had been excluded by the previous section 296.

57. As to subparagraph (4), BDC argues that the words “required or prohibited” should be read somewhat restrictively so as to cover only those cases where a pre-existing enforcement notice, or LPA order, or similar action had already been issued and had required X to be done or had said that Y was prohibited. I agree that these may be paradigm cases where the language of requirement or prohibition is found but I do not accept that these words cannot have a wider meaning so as to encompass that which the Act itself says cannot be done. After all, section 57 says that planning permission is required for the carrying out of development of land and section 171A then says that doing so without the required planning permission is a breach of planning control.
58. Moreover, subsection (4) itself speaks not only of that which is required to be done or prohibited under the Act but that which is required to be done or prohibited by the Act, so it is not limited to what is required by a notice served under or pursuant to, as it were, the Act itself. Section 57 itself imposes a direct requirement. On that footing, it is difficult to see why a section 187B injunction application is not, on any view, something done in connection with the section 57 requirement to obtain planning permission. After all, the whole basis of BDC’s claim is to seek an order preventing or reversing development where the requirement for planning permission has not been satisfied.
59. As to that, however, BDC argues that although section 57 imposes a requirement, it is not a specific requirement, or it is not specific enough; as opposed to one which states what particular thing should be done or not done. BDC contends that the requirement in section 57 is at too high a level. I appreciate that it is at a high level but, first, I do not think that that necessarily excludes the section 57 requirement from the purview of section 296A.
60. Second and, in any event, I take the view that a breach of planning control is, in common sense terms, something which is prohibited by the Act. After all, one has section 187B located within the enforcement part of the Act which then empowers the court to enforce the prohibition by injunction. Note also that section 187B covers injunctive relief against an actual, as well as a threatened, breach of planning control.
61. In this regard, BDC makes the further point that while section 187B is, indeed, in the enforcement section of the Act, when one comes to section 171A (2), what is described as constituting “enforcement action” is only the issue of an enforcement notice and other similar notices. A breach of planning control, which is the basis of the injunction under section 187B, is defined separately in subsection (1) However, this does not assist BDC, in my view. First, enforcement action as a defined term is not used in section 296A.

Second, an enforcement notice also relies at its core on a breach of planning control, just as the injunction does.

62. It is correct that BDC advances a reason for its restrictive reading of subsection (4). It says that it makes sense to now allow the service of an enforcement notice because then at least the Crown knows what is alleged to be the breach of planning control and it may be prepared, at that stage, simply to comply with the notice but, of course, it does have a right to challenge it. So, says BDC, what is significant is that there cannot be any court proceedings which would otherwise follow from non-compliance with an enforcement notice. On the other hand, it says, if there has been no enforcement notice, an LPA should be entitled to seek an injunction under section 187B so that in this way again the Crown is formally notified of the LPA's position possibly in advance of any breach and, moreover, the court can say what the position is. At that point, however, having clarified the point, the court can go no further. BDC accepts that while the court could make an injunction, it would be prevented from enforcing it in the event of non-compliance by the sanction of committal or a fine for contempt of court.
63. I am afraid I do not accept this argument. Looking at section 296A as a whole, it seems to me that the true divide is between action taken by the LPA, which is permitted, and action by the court, which is not, insofar as in the context of enforcement. Added to this divide is entry on land which is treated the same way as action by the court. Here, BDC made a related point that in essence, section 187B is all about, or at least included, an apprehended breach of planning control and it would be right that an LPA should have the ability to move the court to stop a breach of planning control from happening, rather than having to wait for the breach to occur and then serving an enforcement notice.
64. I quite see that section 187B has this effect but I fail to see why this means that section 187B should remain available in respect of Crown land where other forms of court action are not. Indeed, if BDC is correct, then presumably a section 187B application could be made if the breach was merely apprehended but it could not be made if there was an actual breach. There is no logic to that distinction and it is reflected nowhere in the language of section 296A. Not only does BDC's restrictive interpretation require extra words which are simply not there but, in my judgment, it falls foul of subsection (5) which explicitly rules out the bringing of proceedings and the making of an application. Indeed, the fact of proceedings is, without more, a step for the purposes of enforcement.
65. Strictly, therefore, the proceedings do not even need to be in connection with enforcement of anything required or prohibited, to be caught by the prohibition in subsection (5). This may be because, in truth, any court action instigated by an LPA where there has been a breach of planning control is likely to involve enforcement one way or the other; however, in any event, the Defendants put their case on the basis that the proceedings here are for enforcement purposes as defined by subsection (4) because they are to restrain a breach of planning control. I do not accept the further point that just because the words under subsection (5) are broad, I need to look for some underlying purpose which would then have the effect of restricting them.

66. A yet further point made by BDC is that on the Defendants' analysis, even an application to the court for declaratory relief, for example as to the applicability of Class Q, would be ruled out, yet surely that cannot be right. The Defendants agree that a claim for declaratory relief would also be ruled out; but they say that there is nothing surprising about that if the underlying purpose of section 296A was to exclude proceedings or applications for some form of relief from the court. Further, and, in truth, an application for a declaration would be designed to achieve the same end as an injunction which could not itself thereafter be enforced by committal, namely to set out what the correct position was in relation to a breach of planning control, or not, with the intention that the Crown would follow the court's ruling. That, to my mind, in reality is again a question of enforcement. In any event, BDC did not seek declaratory relief here but put its case firmly on the seeking of injunctive relief pursuant to section 187B.
67. However, BDC makes the point that the absence of an express exclusion of section 187B in section 296A itself shows that the position had clearly changed and that section 187B is now in, as it were. However, that point is wrong, in my view. The scheme of section 296A, unlike that of 296, is not to exclude steps that could otherwise be taken against Crown land by reference to particular provisions, for example 102, 103, 172, 187 etc as the earlier section 296 did. Rather, section 296A makes the exclusions by reference to generic descriptions like the bringing of proceedings, entry upon land etc.
68. Indeed, I think the point about section 296 runs the other way. Section 187B is specifically excluded there along with section 172 enforcement notices but while enforcement notices are specifically brought back in in section 296A, injunctions are not and the language, in any event, favours the exclusion of all court proceedings and applications in the way that I have already explained. I should add, though obviously it is not authority, that the learned editor of the Encyclopaedia of Planning Law, Mr Elvin KC, states in his commentary on section 296A that a step for the purpose of enforcement would include an application for a section 187B injunction (see paragraph P296.03.2.1(b)).
69. For all the reasons given above, I am of the clear view that any proceedings or applications founded upon section 187B brought or made against the Crown are prohibited by section 296A. The Jurisdiction Point is therefore determined in favour of the Defendants.

### **THE CLASS Q POINT**

70. In light of my conclusion on the Jurisdiction Point, it is strictly unnecessary for me to deal with this. However, I will deal with it since the matter may go further and, in any event, it has been fully argued.

### **The Law**

71. There is no relevant decided case on the interpretation of Class Q, which is perhaps unsurprising, nor have I been provided with any admissible material which could assist on its interpretation. The first question concerns the interpretation of the word "emergency".

Here, it has been exhaustively defined within the provision as “an event or situation which threatens serious damage to (a) human welfare in a place in the United Kingdom” etc as I have recited. In this case, the initial focus is on a situation rather than an event. The latter, I agree, connotes some specific and perhaps one-off event but the former obviously contemplates something different and something which may occur over a period of time and/or which is of a continuing nature.

72. BDC contends that I should nonetheless look at and be guided by dictionary definitions including those which appear on Google as an additional interpretive aid. Thus, in Ms Goodings’ third witness statement she says that 12 out of 13 search results in relation to “emergency” include words like: sudden, unexpected, or unforeseen, reflecting the Oxford English Dictionary’s definition. In her second witness statement she contends that Class Q is really all about natural disasters. I see that but I do not consider that I can, or should, be assisted by, or dictated by, what amounts to a gloss on the statute where the statute has provided its own discrete definition. Indeed, if the suggested gloss were correct, it is hard to see how the expression “situation” would fit in at all since it is referring to a particular state of affairs.
73. BDC makes two additional submissions here. First, it says that the only consultation obligation under Class Q is for the developer to notify the LPA of the Development as soon as practicable after commencing it. So, it is said, this really does contemplate some unforeseen event, because otherwise why does the developer only have to inform the LPA after the Development has started? This must assume that it would not be possible or practicable to do it earlier, yet in this case BDC was put on notice before the Development has started.
74. I do not accept that this provision has this consequence. In some cases, no doubt it is not practicable to notify any earlier. An earthquake might be a good example;, but the fact that the notice provision is framed in this way does not restrict the type of emergency which would otherwise be covered by the language of this provision, in my view, nor is it an indicator as to how to interpret it.
75. A further point made is that section 293A makes provision for the Crown, through an appropriate authority, to make an application for planning permission directly to the Secretary of State as distinct from the usual procedure under Part 3 of the Act if the Development is of national importance and it is necessary to carry it out urgently. It is said that this shows that there is a ranking of urgency or seriousness such that if the event or situation in question truly falls under section 293A, it cannot also fall within Class Q where there is no need for a planning application at all.
76. However, I do not accept the suggestion of some kind of ranking, although I obviously accept that this provision in section 293A is there. It was, in fact, introduced in 2004 at the same time as section 296A. I have looked at the commentary in the Encyclopaedia for Planning Law which suggests that its need arises where the application might be thought to be refused at LPA level and which, in any event, should go before the Secretary of State as

if called in; but on any view, and regardless of that commentary, it seems to me to be a different creature and does not assist on the interpretation of Class Q.

77. Next, I turn to the use of the words “in a place” and “of a place” in subparagraphs (a) and (b) but not (c) of Q.2(1). BDC contends that this means that the relevant damage to human welfare, or the environment et cetera, must occur in a specific or a particular place. Damage which affects more than one place, or which could occur in numerous places within the UK is outwith Class Q. I disagree. I think that, in fact, the whole point of the reference to a place in the UK is to distinguish it from damage which might occur outside the UK, in which case Class Q would not be available. BDC says that it must mean more than that because subparagraph (c) does not refer to a specified “place” at all, but that is surely because one is there talking about general security considerations which, perhaps, cannot be located in any particular place, and so the only qualification is that it is the security of the UK as opposed, presumably, to that of countries outside the United Kingdom.
78. By way of contrast and taking homelessness as an example, homeless asylum seekers will be in particular places within the UK. Undoubtedly, they will not all be located in the same place and they may be in a number of places when they would experience destitution or homelessness; but it surely cannot be suggested that “in a place” means any single place, in other words in only one place. That would be absurd, and it would rule out an event or situation causing loss of life in, say, three quite separate places because of the nature of that event or situation, all the more so when one considers the list of types of damage to human welfare which are set out in subparagraph (2). One can easily imagine disruption of health services, communication, supply of money in more than one location yet traceable to one event or situation. Given the advances in technology and infrastructure, this is rather more likely than less these days. In other words, I consider that “in a place” is really the same as somewhere and it can include multiple locations.
79. In this context, and probably in the context of how to interpret the expression “emergency” as well, BDC makes an overarching point which is that on the interpretation proffered by the Defendants, it would mean that any serious situation of national significance which government policy seeks to address could, in theory, allow it to disregard wholesale the planning regime because it would always be open to it to claim Class Q. In other words, this is a form of floodgates argument. In particular, it is asked rhetorically if the Development at the Site could constitute Class Q, why not the more general problem of homelessness and the serious shortage of housing stock which occurs in many local authorities?
80. As to this, the particular example posed does not work because the bodies which would seek to reduce the housing shortage by new development would be local authorities, not central government using Crown land. The fact that central government is, of course, concerned with housing shortages as a matter of policy does not alter this position. More generally, I do not accept the floodgates argument. Class Q uses clear and precise language and whether it applies to any particular case will depend on the facts of that case

and, of course, it is concerned only with Crown land. I will say something more about the use of Class Q in the present context when I apply the law to the facts below.

### **Analysis**

81. That concludes my determination of the law and the interpretation of Class Q. I then turn to analysis. The first question is what is the actual emergency here, if any? The Defendants contend that the unprecedented numbers of asylum seekers which the Secretary of State is legally obliged to support, combined with the absence of suitable accommodation, is an event or situation for the purposes of Class Q. I am not sure that it constitutes an event but, in my judgment, it could certainly constitute a situation. It is a present situation, although it has emerged over time as the chronology above shows.
82. Before proceeding further, I note that BDC contends that its emergence over time is itself a reason for saying that it is outwith Class Q. That is largely a function of BDC's submissions on the interpretation of Class Q which I have rejected. I see no reason in principle why a situation which develops over time cannot become an emergency at some point within the meaning of Class Q.
83. Next, the question is whether that situation threatens serious damage to human welfare as defined. It seems to me that it does because there is the real prospect of homelessness of asylum seekers in significant numbers absent some further accommodation being found. At the very least the present situation involves or may cause it. If that is correct, then on the facts of this case the damage must be serious because of the potential number of asylum seekers who may become homeless.
84. This is in the context of the need to support, with accommodation, a record number of between 120,000 and 140,000 asylum seekers this year in circumstances in which the continued use of hotels is not sustainable. That is not simply because of cost but because of the issues of local authorities that have arisen where hotels have been used and the fact that, especially as one approaches summer, the availability of such accommodation becomes more limited. Moreover, albeit on only one occasion, injunctive relief was granted to prevent the use of hotels as a means of solving the problem.
85. BDC argues that really this is all about cost and that while cost is a relevant factor, it cannot be a trump card. I do not accept that the plan to use the Development is simply about cost, though obviously the cost of maintaining asylum seekers in hotels, especially on a spot booking basis is very expensive. It is also a question of the general sustainability of the hotel options going forward as explained above, in Mr Banner's witness statement and in the emergency statement. Moreover, provision of accommodation for the asylum seekers is not merely an option for the SSHD, it is a statutory obligation.
86. I now turn again to the suggestion by BDC that all of this is really no more than, or could equally be seen as no more than, a policy question of how to provide more homes nationwide. I do not accept that, not least because of the SSHD's statutory obligations and

the rapid rise in the number of asylum seekers for whom accommodation must be provided. In this context, a point was made by Ms Goodings that the Development would serve to accommodate not only asylum seekers who had to be accommodated initially under section 98 of the 1999 Act, where they appear to be destitute pending a section 95 decision but also those who are then accommodated pursuant to section 95 who have been determined to be destitute. The argument is that section 95 accommodation will last longer, which is obviously true, and that this does not fit within Class Q because the emergency is surely concerned only with section 98, immediate and very temporary relief.

87. This was not a point made by, or stressed by, Mr Beglan in either his written or oral argument. It is a bad point anyway. The emergency here is the situation giving rise to a real risk of homelessness on the part of numerous asylum seekers. Both sections 95 and 98, together with regulation 5, place duties on the SSHD to avoid that by accommodating them. It does not seem to me to matter whether the Development will satisfy section 98 or section 95 duties or both. It is plainly intended to avoid or mitigate homelessness on the part of the asylum seekers in the circumstances already outlined. Moreover, the emergency statement makes clear that the Development is intended to operate with regard to both duties.
88. Moreover, it must be remembered that Class Q only allows a development to operate without planning permission for twelve months. In addition, the intent is that an individual asylum seeker will only be given accommodation at the Site for six months. The fact that ultimately the intention is to keep the Development operating for longer than twelve months if planning permission can be obtained is irrelevant, in my view, because it will no longer be operating under the egis of Class Q. Accordingly, I consider that there is a qualifying emergency here.
89. The next question is whether the Development will prevent it, or reduce, or control, or mitigate its effects, or whether it is for the purpose of taking other action in connection with it. I do not think it can be said that the Development alone will prevent or remedy the emergency. Indeed, the Defendants' active proposals to use Bexhill and Scampton as well suggests not but, on the face of it, the Development would at least reduce, or control, or mitigate the its effects. Even if there were other ways of achieving such a reduction or mitigation, that does not disqualify the Development provided it has that effect. In my view, it clearly does.
90. I should here refer to another matter and that is, that it is clear that the Defendants will seek to involve Class Q in relation to at least, I think, Scampton and possibly Bexhill. This would then mean that there would be two further twelve month periods of operation, assuming the requirements of Class Q could still be satisfied. Does Class Q allow for that? In principle, I see no reason why not. It seems to me to be entirely possible to have one qualifying emergency and yet more than one development which then satisfies subparagraphs (a), (b), or (c) of the definition of the permitted development. That said, I am, of course, only concerned with the application of Class Q as it applies to the Site.

91. For all the reasons given above, I am quite satisfied for myself that the Development here is covered by Class Q and I would have so found had I had jurisdiction to entertain the matter at all and therefore it would have been necessary for me to make a finding on Class Q. However, BDC says that it has made its own judgment as to whether the damage here was serious and as to whether there was an emergency and judged it in negative terms. It asks me to defer to that opinion, or at least give it real weight because these are matters of planning judgment.
92. I disagree and, indeed, there is no actual decision on the part of BDC here anyway over and above the decision to make the application for the injunction. But the real point is that these are not matters of planning judgment. Rather, they are questions of analysis in the context of how Class Q is, as a matter of law, to be interpreted. As already noted, the Defendants actually make a similar point going the other way. This time it is in relation to the Secretary of State's decision that it is Class Q as set out in the emergency statement, but for the same reasons, I disagree that this is something to which I must defer or to which I give great weight.

## **CONCLUSION**

93. In the light of my findings above, the question of any injunctive relief does not arise. Even if I had jurisdiction to consider making an injunction, it would still have not arisen as I would have found that Class Q applies so there would be no breach of planning control on which an injunction could bite. Accordingly, it is not necessary to consider the merits of any injunction by reference to the principles set out in the cases of *South Bucks District Council v. Porter* [2003] 2 AC 558 and *Ipswich*.
94. This means that I do not have to consider the numerous points in relation to planning harm which have been raised by the LPA. These include concerns as to whether there is, or can be, a proper access infrastructure to and from the Site, the effect that the Development may have in relation to the question of sustainable access to local healthcare and other services in the context of the villages near to the Site, to Braintree and other matters. Conversely, I have noted what the SSHD says it will put in place to alleviate such potential difficulties.
95. I should assure the various parties interested in this case that I do not suggest that all of these points will not need to be considered as and when an application for planning permission is made by the Defendants for the more permanent development. It is simply that as a matter of law and in the light of the findings I have made, they do not arise for consideration now. In the event, this claim must be struck out for the reasons given in the Jurisdiction Point section of this judgment. I conclude by expressing my grateful thanks to all counsel for their most helpful oral and written submissions.