Neutral Citation Number: **[2026] EWHC 521 (KB)**

Case No: KB-2026-000181

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th March 2026

Before :

DUNCAN ATKINSON KC (Sitting as a Deputy High Court Judge)

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Between :

ROYAL BOROUGH OF WINDSOR & MAIDENHEAD	**Claimant**
- and -	
(1) MARTIN CAWLEY	**Defendants**
(2) TERESA CAWLEY	
(3) THOMAS CAWLEY	
(4) ELIZABETH TIFFANY FLYNN	
(5) PATRICK O'LEARY	
(6) ANN MARIE CAWLEY	
(7) SHANNON COLLINS	
(8) PATRICK CHUCK CONNORS	

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Asitha Ranatunga (instructed by **Legal Services, Royal Borough of Windsor & Maidenhead)** for the **Claimant**

Felicity Thomas (instructed by **Brilliance Solicitors)** for the **Defendants**

Hearing dates: 4 February 2026

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JUDGMENT

Duncan Atkinson KC:

INTRODUCTION

1. The Claim relates to actual and apprehended breaches of planning control at land at the junction of Fifield Lane and Oakley Green Road, which was formerly part of Green Acres, Oakley Green Road (hereafter referred to as "the Land"). The Land in question is an agricultural field within the Green Belt. The first Defendant, Martin Cawley, is the current owner of the Land.

2. The Royal Borough of Windsor and Maidenhead ("the Council") is the local planning authority, and as such is empowered under the Town and Country Planning Act 1990 ("the Act") to restrain actual or apprehended breaches of planning control. The Council considers that there has been widespread unauthorised development on, and unauthorised use of, the Land, including its residential occupation. There has been a material change of use and operational development without planning permission. These have included the tipping of hardcore materials on the Land, and the segregating of pitches, with associated operational work, to allow for the importing of mobile homes on the Land. The Claimant also considers that there is likely to be further breaches of planning control on the Land which will include further unauthorised residential occupation.

3. On 21 January 2026, the Council was granted interim injunctive relief by the Honourable Mrs Justice Farbey DBE following a without notice application. That relief, granted pursuant to section 187B of the Act, was intended to restrain apprehended breaches of planning control, and to maintain the status quo as to the level of occupation and development of the land until the return date for the order, at which the defendant(s) could be represented. That return date was 4 February 2026, when the case was listed before me.

<u>The evidential basis for the interim injunction</u>

4. The learned Judge had before her evidence in the witness statement of Arron Hitchen (dated 20 January 2026), Team Leader (Enforcement and Conservation) at the Council.

5. According to the Land Registry, the freehold owner of the Site is Mr. Kiran Kumar Patel. However, as Mr Hitchen explains, Council officers have been told that the Land had been sold to John James Frankham in the Spring of 2025. In August 2025, the Council identified that a section of hedgerow had been removed so as to create an access to the Land, and thereafter it was noticed that fencing had been erected. The Council spoke to Mr Frankham, who gave an undertaking that such unauthorised development of the Land would cease. When further development was identified in January 2026, Mr Frankham was again approached by the Council. Mr Frankham advised that he had sold the land to the first defendant in Autumn 2025. On 19 January 2026, the first defendant himself confirmed to Council officers that he was the current owner of the Land, and that was accepted on his behalf at the hearing on 4 February 2026.

6. That contact with the first defendant occurred when Council officers attended the Land, following reports that a number of individuals at the Site who had been carrying out development in tipping hardcore materials on the Site, segregating pitches for mobile homes, with associated operational works, and generally preparing it for moving on mobile homes, caravans, or motor homes for residential or other purposes. The Council identified that 4 segregated pitches for mobile homes had been created, with associated works. The First Defendant confirmed that 4 new families within the same family unit were intending to reside on the Site. He also said that he had a planning agent, and that he would be looking to obtain planning permission.

7. On 20 January 2026, the Council issued and erected a Temporary Stop notice, pursuant to section 171E of the Act. In contravention of this notice, by the evening of 20 January 4 mobile homes, 3 motor homes and 1 touring caravan had been brought onto the site It was as a result of this that the Council made the application for interim injunctive relief on 21 January 2026.

The interim injunction and those to whom it applies

8. I have been provided with a helpful note of the hearing on 21 January 2026.

9. The learned Judge determined there to be a *"serious question to be tried*", applying the test identified in *American Cyanamid v Ethicon Limited* [1975] UKHL 1; [1975]

AC 396. She was satisfied that the Council had adduced evidence of an unauthorised development on the Green Belt. She further found that damages were not an adequate remedy, given the environmental harm. As to the balance of convenience (by reference to the third stage of the *American Cyanamid* test), the learned Judge found the maintenance of the status quo was necessary until the final determination of the Council's application for final injunctive relief and preventing operational development associated with unpermitted residential use.

10. The interim order was made not only against the first defendant but also against persons unknown. The reason for that element of the injunctive relief, in accordance with the approach sanctioned by the House of Lords in *Wolverhampton City Council and others London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2 WLR 45, was that there was evidence of other persons developing and residing on the land. Alternative service of the order to permit it being drawn to the attention of others either resident on the Land or wishing to establish such residence was addressed by the Interim Injunction. There has been compliance with the terms of the order in this regard.

11. Between the service of the interim injunction on 21-22 January 2026 and that return date, the first defendant through his solicitors has given notice of those beyond himself who are residing on the Land on the four pitches into which it has been divided. In summary, these are as follows:

(a) Plot 1 – The first defendant lives in a mobile home and campervan on this part of the Land with his wife, Teresa Cawley, their adult son, Thomas, and their 15 year old daughter;
(b) Plot 2 – A caravan is occupied by Elizabeth Flynn and Patrick O'Leary
(c) Plot 3 – Ann Marie Cawley and her cousin, Shannon Collins, occupy this plot with their 4 children aged 5, 3 (x2) and 2;
(d) Plot 4 – Patrick Connors occupies this plot with his 5 year old child.

12. At the hearing on 4 February 2026 application was made, pursuant to CPR 19.4(11), to join these adult residents of the Land as defendants, in the alternative to their designation as persons unknown.

13. The test for doing so is that set out in CPR 19.2(2), which provides that "*The court may order a person to be added as a new party if – (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue*".

14. It is accepted that this test is clearly made out in relation to those who have identified themselves/have been identified as in occupation of the Land. This is clearly the case in relation to each of those adults named above, and I therefore granted the Council's application at the hearing on 4 February. Given that there was no evidence of any other person in residence remaining unidentified, and that the terms of the interim injunction precluded any further person from moving onto the land, I was also satisfied that there was no longer a need to include persons unknown in the list of defendants, and I amended the order accordingly.

Application for a final injunction

15. The Council's position continues to be that there remains an imperative need for injunctive relief in relation to unauthorised development of the Land in breach of planning control. However, at the hearing on 4 February 2026 the Council made application that a final injunction should now be granted in relation to the development and use of the land. The effect of this injunction would be to cause the restrictions on development of the Land imposed by the interim injunction to continue for a 2 year period.

16. The Council submits that the Court can proceed to make a final injunction because there is no dispute as to the facts behind the injunction. There is no suggestion that the development of the Land hitherto has been other than in breach of planning control, or that any further development in the absence of the grant of planning permission would be authorised.

17. This application was resisted by the Defendants on a number of grounds. Although these grounds had a tendency to evolve during the course of the hearing, in their essentials these were as follows:

(a) The 4 February hearing was the return date in relation to a without notice application for interim injunctive relief, and it was not appropriate to deny the defendants proper time to respond substantively to the grant of such relief before any final order was made;

(b) An application has now been made for planning permission, on 1 February 2026, and a final order should not be granted unless and until that application is refused;

(c) Correspondence between the Council and solicitors for the defendants had proceeded on the basis that there would be an extension to the interim injunction, maintaining the status quo but not requiring the reversal of any development of the Land that had already been undertaken, pending the determination of the planning permission application, and the only outstanding issue between the parties in that context was as to costs;

(a) The Council has not demonstrated that it has considered the welfare needs of the defendants, the Council's compliance with its Public Sector Equality Duty ('PSED') under section 149, Equality Act 2010.

(d) The Council has similarly not undertaken any proper assessment of whether a final order would infringe their rights under the European Convention on Human Rights ('ECHR'), and in particular the implications of Article 8 and the First Protocol, Schedule 1 to the ECHR.

Relevant law

18. Pursuant to section 57 of the Act, planning permission is required for "*the carrying out of any development of land*". Development is defined by section 55(1) as "*the carrying out of building, engineering, mining or other operations in, on, over or under the land or the making of any material change in the use of any buildings or other land*".

19. Section 55(2) of the Act identifies operations which shall not be taken as involving such development, and this includes, at section 55(2)(e) "*the use of any land for purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used".* Section 336(i), in so far as is relevant, makes clear that "*agriculture includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock ..., the*

use of land as grazing land, meadow land, osier land, market gardens and nursery grounds…."

20. Section 171A(1) of the Act makes clear that carrying out development without the required planning permission is a breach of planning control. That said, Chamberlain J made clear in *Durham County Council v Secretary of State for Levelling up, Housing and Communities* [2023] EWHC 1394 (Admin) (at para.34) that it was for the Court to determine "*whether the development was an actual or apprehended breach of planning control, if there was a dispute about that*".

21. A planning authority may issue an enforcement notice, pursuant to section 172 of the Act, where it appears to them that there has been a breach of planning control, in that it is expedient to issue the notice having regard to the provisions of the development plan and to any other material considerations. A failure to comply with an enforcement notice renders the recipient liable to criminal proceedings, pursuant to section 179(1) of the Act. The recipient can appeal against the notice under section 174 of the Act, and the grounds for such an appeal, as set out at section 174(2), include (in so far as is relevant in these proceedings) "…*(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged; (b) that those matters have not occurred; (c) that those matters (if they occurred) do not constitute a breach of planning control*..".

22. In relation to such an appeal, the Court made clear in *Chelmsford City Council v Lee* [2019] EWHC 756 (QB) (at para.46) that the Court is not required to evaluate the prospects of success for any such appeal in considering enforcement action taken by the local planning authority under section 187B of the Act. HHJ Dight (sitting as a Judge of the High Court) observed that "*it would be sensible for the court not to shut its mind to the possibility of an appeal being successful, but it is not… for me to evaluate the real chances of success".* The same approach would apply to a belated application for planning permission.

23. Section 187B(1) of the Act provides that "*where a local planning authority considers*

it necessary or expedient for any actual or apprehended breach of planning control to be restrained by an injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise, and if there are other powers under this Part".

24. The principles which govern the exercise of the court's power under section 187B of the Act were considered by the House of Lords in the case of *South Buckinghamshire District Council v Porter [2004] UKHL 33* (referred to hereafter as "*South Buckinghamshire")* and more recently by Holgate J in *Ipswich Borough Council v Fairview Hotels (Ipswich) Ltd [2022] EWHC 2868 (KB)* (referred to hereafter as "*Ipswich")*.

25. The relevant principles identifiable from those authorities can be summarised as follows:

(a) The Court has a discretion as to whether to grant an injunction. As Lord Bingham said (*South Buckinghamshire*, para.28): "*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*."

(b) The court must decide whether in all the circumstances it is just to grant an injunction. Lord Bingham observed (*South Buckinghamshire,* para.29): "*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. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for.*

(c) There is no single test for the court's discretion should be exercised in favour of granting an injunction because it is a fact-specific assessment. However (*South Buckinghamshire,* para.29): "*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. So will a history of unsuccessful enforcement and persistent non-compliance, as will evidence that the defendant has played the system by wilfully exploiting every opportunity for prevarication and delay, although section 187B(1) makes plain that a local planning authority, in applying for an injunction, need not have exercised nor propose to exercise any of its other enforcement powers under Part VII of the Act…"

(d) In this regard, the Court in *Chelmsford City Council v Mixture* [2024] EWHC 1006 (KB) observed: "*There can be no justification for wilful and persistent non-compliance with the Enforcement Notices and the continued use of the Land in breach of planning control*" (paragraph 43) and that the fact that "*The Defendant has not complied with any of the Enforcement Notices served by the Claimants and has displayed no willingness to do so*" meant that "*His conduct indicates a wilful, and flagrant, disregard for the integrity of the planning system*" (paragraphs 45 to 46).

(e) A local planning authority cannot exercise its power under section 187B unless it considers it necessary or expedient to restrain a breach of planning control by seeking an injunction rather than some other means of enforcement (*South Buckinghamshire,* para.71).

(f) Although it is not for the court to question the correctness of planning decisions which have been taken, the court should come to a broad view about the degree of environmental damage resulting from the breach and the urgency, or otherwise, of bringing it to an end (*South Buckinghamshire,* para.38, approving the observations of Brown LJ in the Court of Appeal).

(g) 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 in the circumstances of the case. Ultimately, it is the court's task to strike the

balance between competing interests weighing one against the other. (*South Buckinghamshire,* para.38, approving the observations of Brown LJ in the Court of Appeal).

(h) In relation to the assessment, in that context, of whether an application for injunctive relief is proportionate and necessary, I am referred to the approach the Court adopted in *East Hertfordshire District Council v Flynn* [2025] EWHC 1458. Alison Morgan KC, sitting as a Deputy High Court Judge, accepted the Council' submission that such lesser steps would have been insufficient. The learned Deputy High Court Judge said (at paragraph 75): " *I note that the Claimant did not seek to remedy the position itself by removal of the site. Nor did it seek to prosecute any or all of the Defendants for non-compliance of the Enforcement Notice. Whilst these are steps that could have been taken by the Claimant as alternatives to seeking an injunction, I accept the submission of the Claimant that neither route would have led to an appropriate or proportionate remedy in the circumstances of the case. The former would have involved considerable public expenditure. The latter would have involved a criminal sanction and would not have achieved the objective of removing the materials from the site which amounted to breaches of planning control. I consider that there was good and sufficient reason for the Claimant to conclude that neither remedy was an appropriate way of dealing with the breaches."*

(i) The hardship likely to be caused to a defendant by the grant of an injunction to enforce the public law will always be relevant to the court's decision whether or not to grant the injunction. In many cases, the hardship prayed in aid by the defendant will be of sufficient weight to counterbalance a continued and persistent breach of planning control. Lord Bingham said (*South Buckinghamshire*, para.31): "*When application is made to the court under section 187B, the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected and on examination they weigh against the grant of relief, the court will be readier to refuse it. If it*

appears that the local planning authority has fully considered them and none the less resolved that it is necessary or expedient to seek relief, this will ordinarily weigh heavily in favour of granting relief, since the court must accord respect to the balance which the local planning authority has struck between public and private interests."

(j) In that regard, Lord Scott added (*South Buckinghamshire,* para.102): "*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 counter balance 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."*

26. The interaction of Article 8, ECHR to issues of planning control was considered by the European Court of Human Rights in *Chapman v UK* (2001) 33 EHRR 399, in which the Court said (at paragraphs 102): *"Where a dwelling has been established without the planning permission which is needed under the national law, there is a conflict of interest between the right of the individual under Article 8 of the Convention to respect for his or her home and the right of others in the community to environmental protection. When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community."*

27. In *Waverley Borough Council v Gray and others* [2023] EWHC 2161 KB (referred to hereafter as "*Waverley")*, Karen Ridge, sitting as a Deputy High Court Judge (at paragraph 112), observed: "*I remain conscious of the duty to uphold lawful decisions made by planning authorities. I must also bear in mind the consequences of a final injunction when there are no alternative sites available, and the defendants are likely to resort to unauthorised roadside camping which would lead to further environmental harm and hardship for the families and children in terms of their welfare needs not being met. These are significant factors militating against the grant of a final injunction on the facts of this case."*

28. The learned Deputy High Court Judge in that case (at paragraph 55) cited with approval the approach of the Supreme Court in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 to the protection of the welfare of children, when it identified that the relevant principles included the following:

"• *The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;*

• *In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;*

• *Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;*

• *While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;*

• *It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;*

• *To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and*

• *A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."*

29. Finally, the learned Judge declined to grant a final injunction in that case because (at para.113): "…. *it was incumbent on the claimant to investigate matters and to re-assess the balance of factors in light of emerging information. The proportionality of the decision should have been revisited when the claimant became aware of these matters. There is scant evidence to suggest that the claimant meaningfully reviewed the original decision at key points when the identity and needs of individual occupants became known. The impression gained is of an initial decision being taken to pursue injunctive relief and the claimant pursuing it to a final injunction without pausing to re-evaluate the appropriateness of the use of coercive measures on becoming aware as to personal circumstances of the individuals they were concerned with."*

The Council's submissions

30. The Council submits that the grant of a final injunction would be just and appropriate for the following reasons:

(a) There were breaches of planning control on the Land prior to the grant of the interim injunction. The unlawful development of the Land included the importation and tipping of hardcore, the segregation of pitches, and the moving on of mobile homes / touring caravans / motorhomes.

(b) These breaches are serious in that they have occurred in the Green Belt, where there is a strong national and local policy protection against inappropriate development except in very special circumstances. A fundamental characteristic of Green Belt land is its openness. The works, including the stationing of mobile homes / caravans, are fundamentally contrary to that principle.

(c) The breaches of planning control were flagrant both for this reason and because they occurred in breach of a temporary stop notice.

(d) There is a clear need to uphold planning control in the public interest.

(e) The consequences for the Defendants if an injunction is granted are not disproportionate. If a valid planning application is made and granted, the injunction sought can be varied. That said, the Council submits that it is not

likely that planning permission would be granted for the use of the Site for the stationing of caravans.

(f) The injunction seeks to preserve the status quo on the Land as at the date of the Interim Injunction (21 January 2026). It does not seek to remove the hardcore which has been laid, nor seek the removal of the residences or their occupants.

(g) Other enforcement measures are not likely to be effective, as is demonstrated by the breach of the temporary stop notice. Any successful prosecution would only result in a conviction, not the regulation of development on the Land.

The defendants' submissions

31. The defendants did not seek to argue that the making of the interim injunction had been other than proportionate or necessary, and they did not submit that the interim order should not continue at least until the first defendant's belated application for planning permission had been determined. Indeed, the solicitor for the defendants had been in extensive correspondence with the Council to agree a revision to the terms of the injunction, so that the order could continue. It follows that the defendants accept that the Court is entitled to conclude, by reference to the evidence provided, that there have been flagrant breaches of planning control, that other means of enforcement would be insufficient, and therefore that injunctive relief remains necessary and proportionate.

32. The issue, accordingly, is not whether the Court should permit the interim injunction to continue, but whether it should grant a final injunction at this stage.

33. The defendants submitted that it was inappropriate on the return date for the interim injunction to proceed to make a final order, because (a) it was contrary to the position that the parties had agreed in discussions in advance of the hearing, (b) the defendants needed more time to prepare to resist a final injunction and (c) the Council had not demonstrated any proper review of the material that the defendants had provided that was relevant to the Council's PSED or consideration of the impact of such a final order on their welfare or rights.

34. As to the first of these, Ms Thomas, on behalf of the defendants, took me through the correspondence between the solicitors for the defendants and the Council. In summary:

(a) On 29 January 2026, the solicitors sent a draft revised injunction which sought to preserve the status quo through amendments to the terms of Farbey J's order, for example by clarifying that the residential structures on the Land could remain until further order, and addressing what further development could take place. That draft stated that the order would continue until the first defendant's application for planning permission had been determined, and reserved the question of costs.

(b) On 30 January 2026, the Council acknowledged receipt, and provided an amended version of the defendants' draft revised injunction. By this revision, the Council made clear that it did not agree that the order should continue until after the determination of the planning permission application. Instead, it noted that the order could be varied or discharged if such permission was received.

(c) The same day, the defendants' solicitors responded by email to agree the other amendments made by the Council to the defendant's draft revised injunction but repeated their request that the order be drafted to continue until after the determination of the planning permission application.

(d) On 2 February 2026, the Council responded saying that the draft order was agreed "save as to costs".

35. Ms Thomas submits that the Council had thereby agreed to the continuation of the interim injunction preserving the status quo as to the occupation and use of the Land until after the first defendant's application for planning permission had been determined. She submits that the Council's application now for a final injunction is contrary to that agreed position.

36. Secondly, she submits that the return date on the interim injunction represents the first opportunity for the defendants to address the terms of and necessity for the injunction,

and that the defendants have further work they need to do in this regard before the Court can consider other than an agreed position as to injunctive relief. She points to the fact that a number of Welfare and Cultural Impact reports have been obtained and served in advance of the return date, but that there is at least one such report outstanding. She argued that if the Court was minded to make a final order, it should first adjourn to allow this further work to be completed.

37. Thirdly, she submits that there is no evidence that the Council has considered the significant additional material now available as to the welfare needs of those living on the Land. This includes consideration of the rights of a number of vulnerable adults and the wellbeing of a number of children. She points to the fact that at the time that Farbey J granted the interim injunction there was no evidence that there were children on the site, and that position has now changed. In keeping with the approach in *Zoumbass* there is now a need for rigorous enquiries by the Council in relation to the welfare and needs of those children of whose presence on the Land the Council is now aware. There is a need for the Council to demonstrate compliance with its Public Sector Equality Duty and the Planning Policy for Traveller Sites.

38. Finally, Ms Thomas submits that there is a material difference between the extension of the interim order, which she does not resist, and the making of a final order in relation to costs. No order would be made at this stage as to costs if the interim order is extended, but such an order would follow the making of a final order even though a successful planning permission application would alter the position as to whether such an order was necessary and proportionate at a later date.

Analysis

39. It is right to observe that Farbey J granted an interim injunction with a return date of 4 February 2026. She therefore envisaged that there should be an opportunity for those affected by the injunction, who had no advanced notice of it, to make submissions as to whether it should continue. The correspondence between the parties does underline that the defendants would not have expected the Court to be making a final order at the return date hearing.

40. That, of itself, does not preclude the making of a final order. In fact, as Mr Ranatunga submitted on behalf of the Council, there is no dispute that there have been unlawful developments of the Land in flagrant breach of planning controls that can only be addressed by the grant of injunctive relief. There being no factual dispute as to the basis for the making of an injunction, there is, he submits, no good reason not to grant a final injunction at this stage. This position is supported by the willingness of the defendants for the interim injunction to continue. The final order is in the same terms in relation to the restrictions it imposes on their use of the Land, and the order permits on its face application for variation should amendment prove to be necessary. If the making of such an order is necessary and proportionate, then this justifies the grant of a final injunction at this stage.

41. Mr Ranatunga also submits that the Council, as a publicly funded entity is entitled to obtain its costs at this stage, rather than there being a delay for some years pending a planning permission application which is highly unlikely to be successful given that it seeks to perpetuate residential use of agricultural land in the Green Belt.

42. I have considerable sympathy with the Council's position in this regard. However, it is clear from *South Buckinghamshire* and the cases that have applied it that there is a duty on the Council to demonstrate that it has "*taken account of the personal circumstances of the defendant and any hardship an injunction may cause.".* Moreover, as was made clear in *Waverley*, that includes the duty "*to investigate matters and to re-assess the balance of factors in light of emerging information. The proportionality of the decision should have been revisited when the claimant became aware of these matters."* The evidence before me does not demonstrate that necessary re-assessment of the balance in the light of information now available as to the nature and needs of those occupying the Land. That is not a criticism of the Council. The information has only recently come to light. However, now that it has done so, the Council does need to demonstrate that it has reviewed its position, and has addressed the balance, in the light of it.

43. Accordingly, I approach this as an application for an extension of the interim injunction, rather than the determination of an application for a final injunction. On that basis, and by reference to the test in *American Cyanamid*, there is no question but

that the Council has demonstrated that there is a serious issue to be tried, that damages would not be an adequate remedy, and that the balance of convenience lies in maintaining the status quo on the Land and in preventing any further unauthorised development.

44. I therefore make the amended interim injunction sought, and direct costs in the case. Whilst I thereby direct that Council's application for a final injunction should be considered after the final outcome of the first defendant's planning application, it is of course open to the Council to apply for that final injunction at an earlier date, providing it can be demonstrated that it does so taking account of the personal circumstances of those residing on the Land and any hardship they would be caused.