Neutral Citation Number: [2021] EWHC 613 (QB) Case No: QB-2020-003895

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**IN THE MATTER OF AN APPLICATION FOR AN INJUNCTION UNDER s.187B OF THE TOWN AND COUNTRY PLANNING ACT 1990**

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 17/03/2021

**Before** :

**RICHARD HERMER QC**

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**Between :**

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| **CHELMSFORD CITY COUNCIL** | **Claimant** |
| **- and -** | |
| **(1) LEISURE PARKS REAL ESTATE (HOLDINGS) LTD** | **Defendants** |
| **(2) LEISURE PARKS REAL ESTATE LTD** | |
| **(3) JAMES ROBERT CRICKMORE** | |
| **(4) COLIN CRICKMORE** | |
| **(5) MAURICE SINES** | |
| **(6) PERSONS UNKNOWN** | |

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**Jack Parker** (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
**Michael Rudd** (instructed by **Stephens Scown LLP**) for the **1st, 3rd, 4th & 5th Defendants**

Hearing dates: 16th February 2021

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# Approved Judgment

*Covid-19 protocol: This judgment has been handed down remotely by circulation to the parties' representatives by way of e-mail, and by release to Bailii. The date for hand down will be deemed to be Wednesday, 17 March 2021.*

**Richard Hermer QC :**

1. This claim concerns whether the Claimant local authority is entitled to a final injunction to restrain the Defendants from what it alleges are actual and apprehended breaches of planning control.

2. The subject matter of the claim is a large Caravan Park ('the Caravan Park') which has operated at Hayes Country Park in Wickford for many years. The Claimant alleges that work commenced at the Caravan Park in about September of last year on a stretch of land ('the disputed land') that fell outside the boundaries of the relevant planning permission granted in 2013 ('2013 permission'). It seeks a final injunction pursuant to s.187B of the Town and Country Planning Act 1990 ('the 1990 Act') requiring the Defendants to cease use of the disputed land and to return it to grass. The Defendants deny that the disputed land falls outside the 2013 permission and assert that in any event the terms of its Caravan Site Licence ('CSL') permit it to conduct much of the preparatory work already undertaken. They also assert that even if the Court were to conclude that the work was outwith both the 2013 permission and the scope of permitted development under the CSL, the Court should nevertheless refrain from granting an injunction.

3. The core issues for the Court to determine are:

    i) The scope of the 2013 permission, specifically whether the disputed land falls inside or outside of its boundary, in other words whether the recent construction has taken place on land that has the benefit of planning permission **(Issue 1**);

    ii) Whether, even if the disputed land falls outside the boundary set by the 2013 permission, the Defendants (or some of them) are nevertheless entitled to undertake certain works pursuant to permitted development rights said to flow from the grant of their CSL **(Issue 2)**;

    iii) Whether, even if the Defendants have no legal entitlement to conduct the works, the Court should nevertheless decline to exercise its discretion to grant the injunction sought **(Issue 3)**.

**The Parties**

4. The Claimant is the Local Planning Authority for the area that includes the Caravan Park. The First Defendant is the registered owner of the land, the Second Defendant is the holder of the CSL, the Third, Fourth and Fifth Defendants are officers of the First Defendant.

5. No Defence was entered by the Second Defendant, the holder of the CSL, nor were they represented at the hearing before me. It was submitted on behalf of the other Defendants that as the Second Defendant had divested itself of an interest in the land there was no purpose to be served in seeking an injunction against it. I will deal with this issue later in my judgment when I consider relief.

6. For ease of reference, I will refer to the various Defendants collectively throughout this judgment, which (save for the issue of the Second Defendant) is how they were addressed by all parties at the hearing.

## Relevant Background

7. The Caravan Park has operated in Hayes Park for many years. It has been used as a seasonal caravan site since the 1950s and has expanded over time. In September 2001 permission was granted to allow the Caravan Park to remain open for ten months a

year. In 2013 a further application was granted ('the 2013 Permission') which permitted year-round occupancy of caravans situated towards the South West of the site – it is this permission, in particular the position of the boundaries that it set, that form the heart of the dispute between the parties. The following year permission was also granted to allow all year occupancy of caravans to the South East of the site. The whole site operates under a CSL granted on 19 August 2015 whose ambit (as defined by the plans attached to it) are agreed to include the disputed land.

8. The Caravan Park comprises over 300 caravans. These are very large structures which provide permanent homes to many of the residents. Their size and weight mean that they are not placed directly onto the grass but rather on to pre-prepared concrete slabs into which run pipework carrying various utilities. The disputed land only comprises a small part of the overall Caravan Site and is situated along its southwestern border.

9. This is not the first time that the Claimant and Defendants have engaged in litigation. The evidence before the Court sets out an incomplete but lengthy history of planning appeals and enforcement proceedings together with consequential litigation before the High Court, including potential committal proceedings arising out of alleged breaches of an injunction pertaining to land at the northern edge of the Caravan Park. During the course of the trial, I was also informed that a hearing had been conducted in the previous week before the Queen's Bench Division concerning a separate dispute on another plot of land in the south eastern part of the Caravan Park and that judgment in that claim was still pending. I was invited to consider some of the evidence adduced at that hearing. I make plain that I do not consider that the material about other disputes is relevant to the majority of the issues that I have to decide. In particular the existence or nature of other proceedings is irrelevant to the assessment of the location of the boundaries set by the 2013 Permission and equally irrelevant to the determination of whether any permitted development rights flow from the CSL. At its highest, as I explain later in this judgment, some but by no means all of the evidence of previous disputes has peripheral relevance to the question of whether injunctive relief should be granted. Needless to say, nothing in this Judgment should be taken as expressing any view, let alone a finding, about any of the allegations and counter allegations raised in ongoing proceedings.

10. I turn to the background evidence most relevant to the core issues. The Claimant first became aware that the Defendants were seeking to develop the disputed land in early September 2020. On 5 October 2020, the Claimant wrote by email to the Defendants noting that it had received complaints that works had been undertaken to lay concrete bases and other hard surfaces on land it considered fell outside the boundary of the Caravan Park on its southern flank. The Claimant's email noted that a breach of planning control appeared to have occurred but that the removal of the southern boundary fence meant that it was no longer possible to determine the extent of encroachment without instructing a surveyor. The Claimant informed the Defendants

of its intention to survey the area and advised them in the interim to cease any further work.

11. A survey was conducted on behalf the Claimant on 14 October 2020. The Claimant considered that the results of the survey demonstrated that the works were indeed outside of the boundary set by the 2013 Permission. A further site visit conducted on 11 November 2020 showed that notwithstanding the Claimant's earlier advice that development cease, the Defendants had continued to carry out building works including the addition of hardstanding. This prompted the Claimant to seek an interim injunction the following day.

12. The interim injunction was heard before Nicklin J on 12 November 2020. Although the Defendants were represented by their solicitor, they had been afforded little notice of the hearing and made limited submissions. Nicklin J granted an interim order against the Defendants but refused to grant an order against a sixth Defendant namely, 'persons unknown' designed to cover a class of persons who might take up occupancy of any caravans on the disputed land. The terms of the injunction prevented the parties from occupying, or causing others to occupy, the caravans that had been placed on the disputed land as well as preventing any further works.

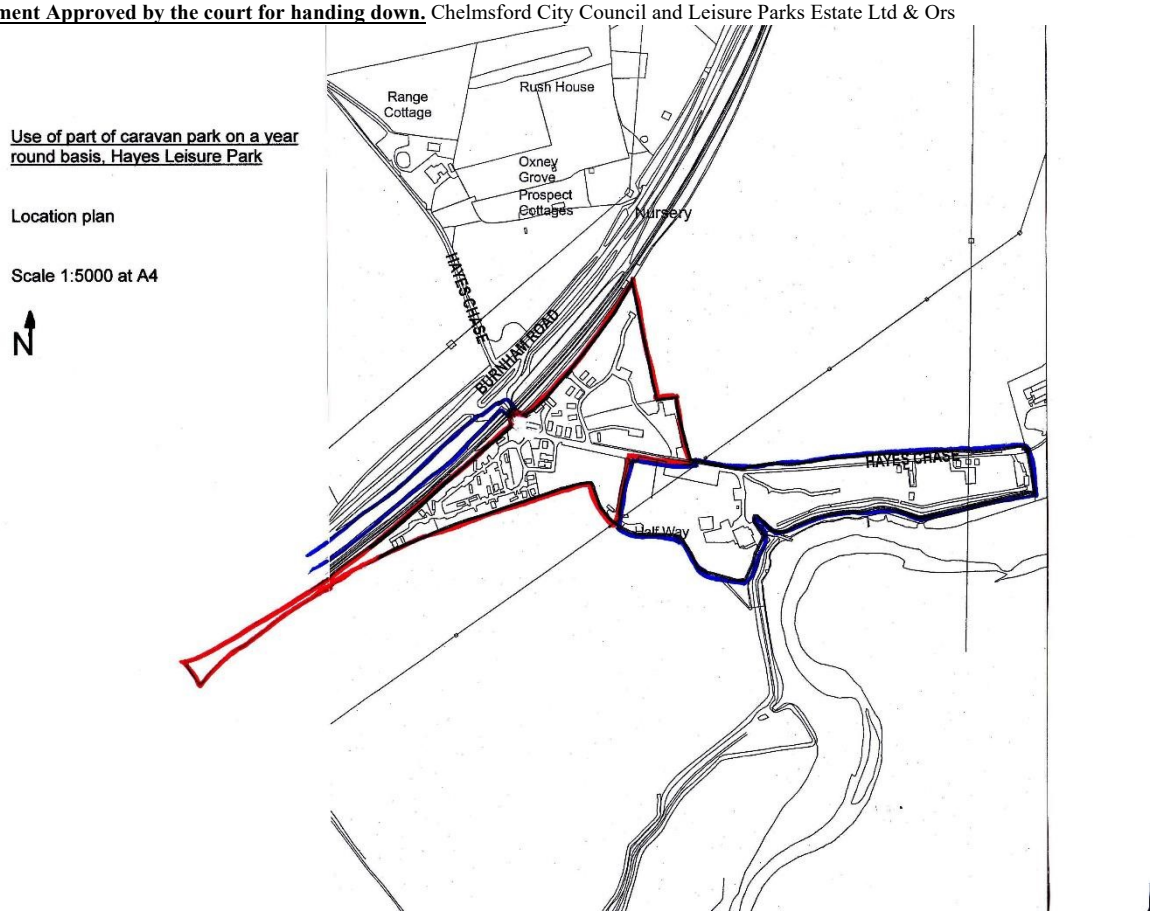
13. The interim Order was continued by Ellenbogen J on 19 November 2020. The matter returns to the Court to consider whether to grant a final injunction.

14. The trial before me was conducted remotely on the Microsoft Teams platform. The parties had previously agreed that there was no need for live evidence and thus the Court received two statements on behalf of the Claimant (both from Mr Harwood, a Planning Officer) and three statements on behalf the Defendant (two from Mr Green, an independent Planning Consultant and one from Ms Rider, an employee of the Defendants). Although the statements (Mr Green's in particular) contained a good deal of opinion, they were not expert reports served pursuant to the CPR Part 35 regime, and their primary purpose was to provide a vehicle for the admission of relevant documentation, the setting of a limited amount of background context and to foreshadow the arguments advanced by the legal representatives at trial. I note in passing that I found the invective employed by Mr Green in his critique of the Claimant to be more of a distraction than of assistance. This did not however prevent me from taking into account all the relevant evidence he sought to convey. At the trial itself, the Court was very much assisted by the able written and oral submissions of Mr Parker for the Claimant and Mr Rudd for the Defendants.

## Issue 1 – The Scope of the 2013 Permission

15. The issue between the parties is exactly where the boundary set by the 2013 Permission lies, specifically whether it incorporates the disputed land.

16. Here there is no dispute that the 2013 Permission incorporated a single site plan. A copy of that site plan is set out below.




17. In describing the southern redline shown on the plan it is convenient to divide it into two halves. The first half is to the right of the feint vertical line that falls towards the centre of the page. The southern redline at this juncture is superimposed onto an Ordnance Survey map and is mainly drawn tightly over a black line and runs adjacent to pre-existing structures in the Caravan Park. For ease of reference, I will refer to the southern redline running up to the vertical line as 'Boundary Line A'. To the left of the vertical line is a red trumpet shaped 'spur' running to the south west. This is not superimposed on any map. I will refer to this spur as 'Boundary Line B' although of course they are shown as one continuous boundary on the site plan.

18. There is no dispute between the parties that if this site plan represents the true delineation of the boundaries set by the 2013 Permission, then the current construction work falls outside of it. There is also no issue that the disputed construction work and placement of caravans has taken place only the land abutting Boundary Line A and that nothing has taken place in the vicinity of Boundary Line B.

19. In most cases the identification of a boundary can be readily ascertained by simple reference to a Site Plan that has been incorporated into a planning permission. As Mr Rudd accepted in argument, the very purpose of a site plan is to permit relevant parties and the public to readily understand the geographical limits of a permission without the need to reference extrinsic materials.

20. The complexity in this case arises, in part, from the fact that whilst the parties agree that the Site Plan was incorporated into the permission, they also agree that at least a section of the plan has been drawn in error. The error relates to Boundary Line B, i.e. the south-westerly spur shown on the plan. The Claimant and Defendants agree that

    the redline of the spur simply cannot be right because once it is superimposed over an Ordnance Survey Grid it is shown to run over a railway track, i.e. land over which permission could never have been granted.

21. The Claimant invites the Court to treat the entirety Boundary Line B as an obvious mistake, to disregard it and to hold that the boundary could never have possibly extended beyond the western limit of Boundary Line A.

22. The Defendants by contrast contend that whilst Boundary Line B is drawn in error it nevertheless demonstrates that permission was granted for an extension of the southwest boundary beyond Boundary Line A, so as to permit vehicle access to the road running from the south of the property. Thus, they contend that the spur itself is not a mistake itself but simply an error in alignment by the draftsperson.

23. How then to interpret the boundaries set by the 2013 Permission? To resolve this issue requires examination of the principles that Courts have applied to interpret the scope of planning permission.

24. The appropriate starting point is the recognition that the modern tendency in the law is to break down the divisions in the interpretations of different kinds of documents, private and public, and to look for more general rules (see, for example, the judgment of Lord Hodge JSC in *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85 §§33-37). As Lord Carnwath JSC explained in *Lambeth LBC v Secretary of State for Housing, Communities and Local Government* [2019] 1 WLR 4317, at §19 this means that:

> "…. whatever the legal character of the document in question, the starting point – and usually the end point – is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense."

25. It has long been recognised that although not subject to special rules per se, there is a particular distinct factual and legal context that bears upon the correct interpretation of planning permissions. This was a point made by Lord Carnwath at §66 of *Trump International* (and repeated in his judgment in *Lambeth* at §18 with which all the court agreed):

> "As will have become apparent, however, and in agreement also with Lord Hodge JSC, I do not think it is right to regard the process of interpreting a planning permission as differing materially from that appropriate to other legal documents. As has been seen, that was not how it was regarded by Lord Denning in the Fawcett case [1961] AC 636. Any such document of course must be interpreted in its particular legal and factual context. One aspect of that context is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved. (Similar considerations may apply to other forms of legal document, for example leases which may need to be interpreted many years, or decades, after the original parties have disappeared or ceased to have any interest.) It must also be borne in mind that planning conditions may be used to support criminal proceedings. Those are good reasons for a relatively cautious approach, for example in the well established rules limiting the categories of documents which may be used in interpreting a planning permission (helpfully summarised in the judgment of Keene J in the *Shepway* case [1999] PLCR 12, 19—20). But such considerations arise from the legal framework

> within which planning permissions are granted. They do not require the adoption of a completely different approach to their interpretation."

26. To like effect, Lord Hodge said at §33:

> "Differences in the nature of documents will influence the extent to which the court may look at the factual background to assist interpretation. Thus third parties may have an interest in a public document, such as a planning permission or a consent under section 36 of the 1989 Act, in contrast with many contracts. As a result, the shared knowledge of the applicant for permission and the drafter of the condition does not have the relevance to the process of interpretation that the shared knowledge of parties to a contract, in which there may be no third party interest, has. There is only limited scope for the use of extrinsic material in the interpretation of a public document, such as a planning permission or a section 36 consent: *R v Ashford Borough Council, Ex p Shepway District Council* [1999] PLCR 12, per Keene J at pp 19C—20B; *Carter Commercial Developments Ltd v Secretary of State for Transport, Local Government and the Regions* [2003] JPL 1048, per Buxton LJ at para 13 and Arden LJ at para 27. It is also relevant to the process of interpretation that a failure to comply with a condition in a public law consent may give rise to criminal liability. In section 36(6) of the 1989 Act the construction of a generating station otherwise than in accordance with the consent is a criminal offence. This calls for clarity and precision in the drafting of conditions."

27. What then are the factors, arising out of the particular and legal context concerning the grant of planning permission, that bear upon their interpretation? As seen in the citations set out above, in *Trump International* both Lord Hodge and Lord Carnwath, endorsed the approach of Keene J in *Ashford Borough Council, Ex parte Shepway District Council* [1999] PLCR 12. This is an authority that has been cited by lower courts on repeated occasions and its recent approval by the Supreme Court underlines its status as an essential interpretative guide. At page 19 of the law report, the Judge set out five general principles as to how planning permissions should be interpreted in their particular context, the first four of which are relevant to this claim. Keene J stated:

> "The legal principles applicable to the use of other documents to construe a planning permission are not really in dispute in these proceedings. It is nonetheless necessary to summarise them:
>
> (1) The general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions: see *Slough Borough Council v. Secretary of State for the Environment* (1995) J.P.L. 1128, and *Miller-Mead v.*
> *Minister of Housing and Local Government* [1963] 2 Q.B. 196.

> (2) This rule excludes reference to the planning application as well as to other extrinsic evidence, unless the planning permission incorporates the application by reference. In that situation the application is treated as having become part of the permission. The reason for normally not having regard to the application is that the public should be able to rely on a document which is plain on its face without having to consider whether there is any discrepancy between the permission and the application: see *Slough Borough Council v. Secretary of State* (ante); *Wilson v. West Sussex County* Council [1963] 2 Q.B. 764; and *Slough Estates Limited v. Slough Borough Council* [1971] A.C 958.
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> (3) For incorporation of the application in the permission to be achieved, more is required than a mere reference to the application on the face of the permission. While there is no magic formula, some words sufficient to inform a reasonable reader that the application forms part of the permission are needed, such as " ... in accordance with the plans and application .. . /1 or " ... on the terms of the application ... ,/I and in either case those words appearing in the operative part of the permission dealing with the development and the terms in which permission is granted. These words need to govern the description of the development permitted: see *Wilson* (ante); *Slough Borough Council v. Secretary of State for the Environment* (ante). [
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> (4) If there is an ambiguity in the wording of the permission, it is permissible to look at extrinsic material, including the application, to resolve that ambiguity: see *Staffordshire Moorlands District Council v. Cartwright* (1992) J.P.L. 138 at 139; *Slough Estates Limited v. Slough Borough Council* (ante); *Creighton Estates Limited v. London County Council*, The Times, March 20, 1958. "

28. More recently, in the case of *UBB Waste Essex Ltd v Essex County Council* [2019] EWHC 1924, Lieven J also set out four principles governing the approach to the interpretation of planning permissions. Although not expressly based on the principles identified by Keene J, and directed to the particular facts of the case before her, they provide additional amplification and illumination of the correct approach to be adopted. Her Ladyship said:

> "52. Firstly, permissions should be interpreted as by a reasonable reader with some knowledge of planning law and the matter in question. This does not mean that they are the "informed reader" of a decision letter, but equally the reasonable reader will understand the role of the permission, conditions and any incorporated documents.

53. As Lord Carnwath has said the permission needs to be interpreted with common sense. Mr Sharland points out with some justification that reasonable people may differ on what amounts to common sense. In my view references to common sense are really pointing to the planning purpose of the permission or condition. If the interpretation advanced flies in the face of the purpose of the condition, and the policies underlying it, then common sense may well indicate that that interpretation is not correct. So, in Lambeth it was plainly contrary to that purpose for the permission not to limit the sale of food items, such an interpretation was contrary to common sense once one understood the planning background.

54. Secondly, it is legitimate to consider the planning "purpose" or intention of the permission, where this is reflected in the reasons for the conditions and/or the documents incorporated. The reasons for the condition should be the starting point, the policies referred to and then the documents incorporated. This is not the private intentions of the parties, as would be the case in a contractual dispute, but the planning purpose which lies behind the condition.

55. Thirdly, where as here, there are documents incorporated into the permission or the conditions by reference, then a holistic view has to be taken, having regard to the relevant parts of those documents. This can be a difficult exercise because where, as here, the permission incorporates the application (including the Planning Statement) and the Environmental Statement and Non-Technical Summary, there can be a very large number of documents to be considered. It may be the case that those documents are not all wholly consistent, and that there may be some ambiguity within at least parts of them. In my view the correct approach is to take an overview of the documents, to try to understand the nature of the development and the planning purpose that was sought to be achieved by the condition in question. The reasonable reader would be trying to understand the nature of the development and any conditions imposed upon it. It is not appropriate to focus on one particular sentence without seeing its context, unless that sentence is so unequivocal as give a clear-cut answer.

56. Fourthly, where documents are incorporated into the permission, as here, plainly regard can be had to them. Where the documents sought to be relied upon are "extrinsic", then save perhaps for exceptional circumstances, they can only be relied upon if there is ambiguity in the condition. In my view, even where there is ambiguity there is a difference between documents that are in the public domain, and easily accessible

> such as the officer's report that led to the grant of the permission and private documents passing between the parties or their agents.
>
> 57. The Court should be extremely slow to consider the intention alleged to be behind the condition from documents which are not incorporated and particularly if they are not in the public domain. This is for three reasons. The determination of planning applications is a public process which is required to be transparent. Any reliance on documents passing between the developer and the LPA, even if they ultimately end up on the planning register, is contrary to that principle of transparency. Planning permissions impact on third party rights in a number of different ways. It is therefore essential that those third parties can rely on the face of the permission and the documents expressly referred to. Finally, breach of planning permission and their conditions, can lead to criminal sanctions."

29. The parties to this claim did not seek to dispute any of these principles, indeed both proclaimed reliance upon them. What separated the parties, and forms the core of the dispute, is how these principles are to be applied to the facts as alleged.

**Submissions of the Parties**

30. The Claimant's case, applying the principles set out above, is that the Court should have exclusive regard to the 2013 Permission and the Site Plan incorporated into it. It contends (and the Defendant do not dispute) that this clearly shows that the work conducted thus far, adjacent to Boundary Line A, falls outside the redline boundary. It would be irreconcilable with principle, it says, to have regard to any document not incorporated into the Permission itself, which leaves nothing beyond the Site Plan.

31. As to the spur on Boundary Line B, the Claimant submits that this is a plain and obvious mistake and should be disregarded in its entirety. The Claimant suggests that it is perfectly possible to conclude that permission was never intended to cover land along Boundary Line B, and that it should be amputated from the ambit of the 2013 permission. In support of this submission, they point to the qualitive difference between the left-hand side of the plan on which the spur rests, and the remainder of the plan to the right. They highlight in particular that the right hand side is drawn over a section of an Ordnance Survey map, whilst the left hand is not. They submit that the qualitative and obvious divide between the two is given visual emphasis by the thin vertical line separating the two sides.

32. The Defendants do not dispute that the Site Plan demarks a southern boundary which excludes the disputed land on which they have recently conducted works and deposited caravans. Their case is that the site plan does not accurately reflect the true position of the boundary and that once the real limit is delineated it can be readily demonstrated that the 2013 Permission fully entitles them to carry out the works undertaken, and those they would wish to complete, together with an access road to the south.

33. This aspect of the Defendants' case is advanced on two interrelated bases. Firstly, the Defendants say that more than simply the Site Plan was incorporated into the 2013 Permission. They contend that the entire planning application was incorporated into

the permission and that therefore the boundary should be identified by reference to all the materials contained in its application. This includes, the Defendants contend, a plan contained in a Flood Risk Assessment Report (the 'FRAP') which was attached to the planning application and which it said clearly delineates a significantly extended southern boundary running adjacent to the railway line and joining the southern road. This approximates the spur shown on the Site Plan but aligned in a more logical position. This the Defendants say is by far the best evidence of the position of the boundary actually granted by the 2013 Permission and the disputed works fall comfortably within it because the boundary in the equivalent position to Boundary Line A includes the land on which the work has taken place. Secondly, in the alternative, the Defendant submits that even if the application documents were not incorporated into the 2013 Permission, it is nevertheless permissible to rely upon them as a tool for interpreting the accurate position of the boundaries because the Site Plan is ambiguous, i.e. it falls within one of the exceptions to the general rule. In particular it is said that the ambiguity, arising out of the obvious error in siting the spur over the railway lines, cannot be cured by simply severing it from the plan – the boundary must be analysed as a whole and when that it done it renders the boundaries shown on the whole site plan ambiguous, including Boundary Line A. In the light of this ambiguity the Defendant argues that it is justified in construing the entire ambit of the permission by reference to the wider materials not least the plan contained in the FRAP. This again, they submit, allows the 2013 Permission to be construed so as to show that the recent construction fell within its true boundaries.

**Discussion**

34. The starting point (per Keene J, principles 1 & 2) is the general rule that in construing the scope of permission regard should only be had to the planning permission itself or documents deemed to be incorporated into it by reference. Accordingly, I turn first to Mr Rudd's primary submission that the planning application itself was incorporated

by reference into the permission, thereby entitling regard to materials such as those contained the FRAP.

35. I reject this argument for two straightforward and sequential reasons.

36. Firstly, the authorities make plain that for the incorporation of the application to be achieved more is required than mere reference to it on the face of the permission. That encapsulates Keene J's third principle set out above that whilst there is no magic formula, clear words signposting incorporation in the mind of the reasonable reader are required.

37. Secondly, there is no such signposting here that even hints that the entirety of the planning application was incorporated into the permission. The permission simply notes that the Council 'has given consideration' to the application. There is nothing in that language that comes close to suggesting incorporation, for example that permission was granted 'in accordance with' or 'on the terms set out in' the application or any other language remotely suggestive of formal incorporation. The reference to 'consideration' simply records the unremarkable fact that the Council has followed a lawful process by considering the application for planning permission before making its decision. Thus, subject to the application of a recognised exception to the general rule, the boundaries set by the 2013 Permission fall to be assessed exclusively by reference to the permission itself and the Site Plan.

38. I turn next to the question as to whether or not the 2013 Permission, and in particular the Site Plan is ambiguous. If it is ambiguous then the Defendants would be justified in relying on an exception to the general rule and seeking to construe the position of the boundary by reference to other relevant documentation including other relevant plans.

39. In most cases concerning the interpretation of planning permissions, the relevant aspect said to be ambiguous (often a stipulated planning condition) is recorded in writing. In that context the requirement to interpret clauses by reference to their natural and ordinary meaning is well understood. The position is a little different when what falls to be examined are plans not prose. Nevertheless, it appears to me that the underlying principles are the same, namely a common sense assessment of the relevant part of the permission document, here (at least) a plan, is required.

40. I start by looking at Boundary Line A in isolation from Boundary Line B. Taken in isolation there can be little doubt that Boundary Line A is clear and unambiguous. It plainly shows a boundary drawn closely to the existing structures and over what appears to be an existing boundary line. Mr Rudd made some general criticisms of the quality of the drafting of the red line but it appears plain and obvious that it was intended to be an accurate demarcation of the boundary, reinforced by the fact that this section of the Plan is drawn over an OS marked plan, i.e. denoting an intent at accuracy and purpose. There is nothing ambiguous about Boundary Line A. This is all consistent with the Site Plan (as agreed) being unquestionably incorporated into the 2013 Permission. As Mr Rudd accepted in argument, the very purpose of a Site Plan (here a single plan) was to permit ready and accurate identification of the boundary.

41. The Defendants alternate case is that Boundary Line A cannot be viewed in isolation to Boundary Line B. They contend that they must be analysed together as a whole. Mr Rudd argued that as Boundary Line B is infected by error it is by definition ambiguous across its entire length of the boundary including that covered by Boundary Line A. This ambiguity he submits entitles him to construe the whole boundary set by the 2013 Permission by reference to the wider body of evidence including the plan contained in the FRAP.

42. Mr Parker, on behalf of the Claimant, asserts that Boundary Line B is not ambiguous it is simply a mistake and the whole section should be taken out of account. Further, even if Boundary Line B it is ambiguous then that cannot be relied upon to deem Boundary Line A ambiguous, thereby entitling recourse to interpretation through extrinsic materials. The Claimant's case is that the two sections can be analysed separately.

43. I turn then to consider whether Boundary Line B is ambiguous and if it is, whether this impacts upon Boundary Line A.

44. I consider that Mr Rudd is correct to classify Boundary Line B as ambiguous. It is ambiguous in at least two connected senses. Firstly, it is ambiguous whether the spur is a mistake or not. It is simply not possible on the face of the Site Plan itself (to which I have must have primary regard) to reach a conclusion on this point. Simply because on close analysis it has an alignment that all accept is erroneous does not demonstrate of itself that an extension beyond the western end of Boundary Line A was never intended. Secondly, if the drawing of the spur was intentional, then its correct position and alignment are ambiguous. It is not obvious from the face of the Site Plan itself, where it would run, for how long and over what amount of land. The spur may

represent the grant of permission but inaccurately set out the correct position, or it may equally be a mistake – either way the position on the face of the Site Plan is ambiguous.

45. The next question is whether the fact that Boundary Line B is ambiguous impacts upon the status of Boundary Line A, which as I have found above, when viewed in isolation is clear and unambiguous in its delineation of the southern boundary. In other words, can one section of the boundary on the plan be considered unambiguous whilst the other is ambiguous?

46. Despite the research of counsel, this is a question that does not appear to have been addressed in previous cases. The Courts have though considered essentially the same question in the context of written conditions, rather than visual plans, and it seems to me that the underlying principles must be the same. In *ex p Shepway*, Keene J noted that simply because one aspect of a clause might be ambiguous did not entitle a party to open up non-ambiguous clauses to reinterpretation by reference to extrinsic materials. At page 24 of the report he said:

> "The justification for such resort to extraneous material is to resolve a particular inconsistency or ambiguity. That being so, it would not be proper to regard other parts of the permission free from ambiguity as open to re-interpretation in the light of the application or, indeed, other extrinsic material. Such material is only being brought into play for a specific purpose.
>
> Such recourse does not make the application or other extrinsic material part of the permission generally. Otherwise the existence of an ambiguity on a single point or word in an otherwise complete and clear permission would mean that the extent of the development as a whole thereby permitted could be cut down by the application. That would be contrary to the general rule spelt out many years ago in *Miller-Mead* and endorsed by the Court of Appeal recently in *Slough Borough Council v. Secretary of State for the Environment*. Moreover, any such exception to a general rule ought to be narrowly construed."

47. The position here is a little different because the 'ambiguous' aspect of the permission is a boundary on a plan forming part of one continuous line with a section that seen in isolation is unambiguous. It is not precisely akin to separately articulated conditions attached to planning permission. Nevertheless, in my judgment it is possible in this case to consider the spur ambiguous whilst at the same time concluding that the remainder of the red line across the southern border shown on the Site Plan is unambiguous.

48. I reach this conclusion for the following reasons:

i) Firstly, a common sense impression when looking at the Site Plan is of a very marked qualitative distinction between the right hand side of the plan (on which Boundary Line A runs) and the right hand side on which Boundary Line B has been drawn. As described and illustrated earlier in this judgment, the right hand side is drawn over an OS map whereas the spur is drawn in hand over blank paper without any reference to landmarks or any other feature. Boundary Line A appears to be obviously drawn with intent and deliberation by the draftsperson with an intent to delineate the precise boundary, Boundary Line B does not.

This qualitive and visually obvious difference means that there is nothing inconsistent or illogical in dividing the two sections and in considering one section ambiguous and the other unambiguous.

ii) Secondly, there is nothing in the misalignment of Boundary Line B that is said to impact, let alone govern, the alignment of Boundary Line A – they seem independent of each other. By this I mean that there is no sense in which the misalignment of Boundary Line B necessarily informs the correct alignment of Boundary Line A. It is not said, for example, that if Boundary line B was superimposed on an OS map and then rotated so it followed the side of the field rather than crossing the railway line (as the Defendants contend it does) that a corresponding change of axis of Boundary Line A would benefit the Defendants (indeed the converse would appear to be the case). Again, this inures against a suggestion that there is anything illogical or unnatural in assessing each boundary line in isolation from the other.

iii) Thirdly, this approach is consistent with the principle that permissions should be given a common sense reading (whether text or plan) and that exceptions to the general rule should be, as Keene J said, narrowly construed.

49. There is to my mind nothing unnatural or incongruous in dividing the boundary line in this way. Simply because the lines are continuous does not negate this analysis. If for example, I had a map that showed a road one stretch of which had been accidently covered by an ink spill, it would be right to say that the path of the road no longer visible under the ink was ambiguous without vitiating the accuracy of that which remained intact.

50. Accordingly, I conclude that Boundary Line A as shown on the Site Plan delineates the boundary of the 2013 Permission.

51. I make no findings in respect of Boundary Line B either as to its existence or as to its scope. Whilst I have found this to be ambiguous I do not consider it is an ambiguity that requires resolution for the purposes of this claim. There is no suggestion that any of the disputed work has been conducted on any other land than the land adjacent to Boundary Line A, nor is there any suggestion of an intention of the Defendants to develop land beyond its westerly limit. In these circumstances, even if I had concluded that no permission had ever been granted over a point beyond Boundary Line A (i.e. that Boundary Line B was drawn by mistake), I would have required additional materials evidencing an apprehended breach of relevant planning control before considering granting a final injunction over the land running south towards the road covered by the extant interim injunction.

52. I have also resisted the temptation to provide any view on how the permission would have been construed had I considered it permissible to look at extrinsic materials. It is always tempting to 'lift up the bonnet' and assess whether answers reached by reference to a single permissible source are borne out by the wider body of evidence. There are also many cases in which it is helpful and appropriate for a Court to set out alternative findings in case its primary analysis is shown to have been erroneous. Although I was addressed in some detail on the evidence relevant to the construction of the permission there are two factors in particular that militate against setting out even provisional views. Firstly, an expansive approach would be capable of undermining the stricture that reference to extrinsic material should only be permitted in exceptional circumstances. Secondly and perhaps most decisively in this case, in light of the long history of disputes between the parties, and the ongoing litigation of

which I was told of only part, it is prudent not to express any views on the potency or otherwise of particular documents which are not strictly necessary to decide this dispute but maybe central in others.

**Issue 2 – Permitted Development under the CSL**

53. The Caravan Site Licence ('CSL') provides for a boundary that is more expansive than the 2013 Permission and includes the area over which the disputed work has taken place.

54. The Defendants contend that this gives rise to an entitlement, by way of permitted development rights, to conduct such works as are necessary to fulfil the conditions of the CSL. Mr Rudd does not suggest that this gives rise to a right in itself to place caravans on the land but he does submit that it permitted his clients to conduct the array of works on the land, for example, putting in concrete foundations, laying utility pipes and tarmacking paths and roads.

55. The statutory basis on which this submission is founded is the Town and Country Planning (General Permitted Development) Order 2015 ('the 2015 Order') which by Article 3(1) provides:

> "… planning permission is hereby granted for the classes of development described as permitted development in Schedule 2"

56. By Class B, Part 5 of Schedule 2 one of the classes of development described as permitted includes CSLs. It provides:

> "Development required by the conditions of a site licence for the time being in force under the 1960 Act." [Emphasis added]

57. Mr Rudd observed that a CSL can only be granted in respect of land that enjoys planning permission. This much seemed common ground. As I understood one element of his argument, he seemed to be suggesting that because the 2015 CSL granted a larger footprint than the 2013 Permission, it demonstrated that the true extent of permission was larger than that shown on the Site Plan and is more accurately delineated in the plans attached to the CSL. In so far as this was his argument, it is rejected. The proper approach to the interpretation of permission is as described under Issue 1 above. It is very difficult to divine how the contents of a subsequently granted CSL could possibly bear upon the interpretation of the permission granted two years previously, let alone be somehow declaratory of the boundary lines provided by the permission decision. In light of my findings under Issue 1, it follows that to the extent that the plan attached to the CSL shows a more extensive boundary they are erroneous.

58. Mr Rudd's primary argument under Issue 2 was that the work being carried out in the disputed land was necessary to meet the terms of the CSL and therefore benefited from permitted development under the terms of the 2015 Order. He notes that similar works have been conducted by way of permitted development, without any complaint from the Claimant, across the 300 or so mobile homes on the rest of the site. The same principles, he submits, rendering that work necessary to those homes, applies with equal force to those in the disputed land.

59. Mr Parker's pithy response was that however analysed there was nothing in the conditions attached to the CSL that gave rise to any 'requirement' to carry out any work on the disputed land within the meaning of the 2015 Order.

60. In my judgment the Claimant's stance is plainly to be preferred. Although Mr Rudd, perhaps tellingly, did not hang his hat on any particular condition contained the CSL said to give rise to a requirement to carry out the works, it is plain that they are all aimed at facilitating and servicing habitable caravans, which in my view must be taken as meaning caravans which themselves enjoy underlying planning permission. All of the work that has taken place on the Disputed Land has been to facilitate and prepare for the introduction of caravans where previously there were none. The works are not said to be required to fulfil conditions in the CSL in respect of preexisting homes unarguably within the 2013 Permission. It is thus impossible to see how there can be a 'requirement' within the meaning of the 2015 Order to put in foundation bases, pipework etc for caravans which have no right to be there (in

respect of those already placed on site) or which cannot be placed. There can be no sense in which the Defendants are required by the 2015 Order to build roads to nowhere.

**Issue 3 - Relief**

61. Section 187B of the Town & Country Planning Act 1990 provides:

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

62. The factors which the Court should take into account when considering whether to exercise its discretion and grant injunctive relief are not in dispute in this case. Both parties relied upon the judgments of the Court of Appeal and House of Lords in *South Bucks District Council v Porter and another* [2003] 2 AC 558.

63. Mr Rudd submits that this is not an appropriate case in which the Court should exercise its discretion and make an injunction. He points to the fact that his clients have only carried out works with the boundaries set by the CSL and thus imposing an injunction in the terms sought would be far too draconian a measure.

64. Mr Parker argues that nothing less than an injunction will do. He relies on the long history of enforcement action on the site, the harm to the Green Belt on which the disputed land rests and the need to prevent residential occupancy of the caravans to avoid hardship to future occupants.

65. I am satisfied that it is appropriate to grant an injunction. I reach my conclusion having regard to all the circumstances of the case including these specific factors.

66. Firstly, I have found that the works carried out have been unlawful because they have been in conducted outwith the planning permission. This is obviously an essential predicate of the granting of a final injunction but here the works are not minor, or a minimal disturbance of the land that might render an injunction heavy handed, but rather significant construction works in the Green Belt.

67. Secondly, I consider it relevant, although not of itself determinative, that when in October 2020 the Council notified the Defendants of a likely breach of planning

conditions, and advised that work cease until the position was clarified, they elected to proceed with construction until constrained by interim injunction. This conduct inures in favour of the grant of an final injunction so that there is absolute clarity as to where matters stand and to avoid further breaches.

68. Thirdly, I agree that an injunction has the benefit of clarity so as to prevent the residential occupation of caravans and the consequential difficulties that would arise to their occupants and the Claimant.

69. Fourthly, the history of the disputes between the parties inures in favour of the clarity and certainty brought by an injunction. For the reasons explained above I have been very cautious about engaging in the merits of the numerous disputes and would only have done so had it been necessary to fairly dispose of an issue before the court. Here though, irrespective of the merits or demerits of past and present disputes, the mere fact of the complex history supports the need for clarity.

70. Fifthly, is the lack of corresponding hardship or prejudice that the grant of the injunction would cause. In contrast to cases such as those considered in *South Bucks District Council v Porter and another* [2003] 2 AC 558, no one is presently living on the site and the Defendants do not argue that an injunction would engage, let alone infringe, the Article 8 rights of any person.

71. For these reasons I consider that it is just and proportionate to grant a final injunction. For the reasons set out above this will only apply to the land directly adjacent to Boundary Line A.

**Terms of the Order**

72. At the conclusion of the hearing, I asked the parties to seek to agree what the terms of a draft order should look like if (a) the court were to decide to grant a final injunction (b) it were to exclude the area beyond the western border of Boundary Line A and (c) it were to incorporate the changes flowing from the Claimant's decision to not seek an order against 'persons unknown' or in respect of the fencing.

73. The parties kindly submitted a draft order which they broadly agreed would be appropriate if the Court were to make findings in accordance with these assumptions. There was a minor dispute about one aspect of the wording, and a further dispute about the ambit of the injunction as illustrated on the plan. Save for these points, in light of the conclusions I have reached, I consider it appropriate to grant an order in these terms.

74. As to the outstanding areas of dispute:

75. Firstly, there is a dispute as to whether to whether the prohibition on occupation in the disputed land should be limited to 'residential' occupation rather than 'occupation' more generally. The order will prohibit all occupation. I do not consider it helpful to qualify 'occupation' by introducing room for any possible debate about what amounts to 'residential occupation', for example, whether a person is 'residing' in a caravan if only present on a temporary basis and/or for use as second home. The less scope for ambiguity in this order, the better.

76. Secondly, the parties are not agreed as to whether the plan attached to the Order should include a thin strip of land to the east of Boundary Line A. Mr Rudd accepts on behalf of his clients that this strip of land falls outwith the terms of any planning permission

and is also outside the scope of the CSL. Furthermore, Mr Rudd submits that there is no suggestion of an actual or anticipated breach of a planning condition.

Mr Parker submits that in light of the fact the land is not protected by any relevant permission or licence then no possible prejudice could flow to the Defendants from the grant of the injunction.

77. In my judgment the injunction should not extend to land outside the 2013 Permission. Although this strip of land was covered by the terms of interim injunction, I received no evidence, or submissions, as to why in particular it was necessary to impose a permanent injunction in this area. It seems to me that the mere absence of prejudice cannot of itself justify granting a final injunction and in light of the unequivocal acceptance by Mr Rudd of the lack of any relevant permissions I do not think there is any other good reason for this strip of land to be included in the order.

78. Finally, as set out in the introduction to this judgment, there was a dispute between the parties as to whether it was appropriate for the Second Defendant to remain a party to the injunction. Mr Rudd, although not instructed by the Second Defendant, argued that as they no longer owned the site it would be inappropriate for them to remain bound by the order that no longer had anything to do with them. I consider however that Mr Parker was entirely right in submitting that as the Second Defendant remains named on the CSL they should be covered by the terms of the injunction.

79. I would be grateful if the parties could supply the Court with an agreed version of the Order incorporating the conclusions set out above.