

Annex 5: an injunction to restrain a breach of planning control

Scope of injunctive proceedings

5.1 Section 187B of the Town and Country Planning Act ("the 1990 Act") (inserted by section 3 of the Planning and Compensation Act 1991 ("the 1991 Act")) enables the LPA, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, to apply to the High Court or County Court for an injunction. An application can be made whether or not the LPA have exercised, or propose to exercise, any of their other powers to enforce planning control.

5.2 Similarly, under section 214A of the 1990 Act the LPA may apply for an injunction to restrain an actual or apprehended offence under section 210 (work on trees in contravention of a tree preservation order) or section 211 (prohibited work on trees in conservation areas).

5.3 Paragraph 7 of Schedule 3 to the 1991 Act inserted section 44A into the Planning (Listed Buildings and Conservation Areas) Act 1990. This section corresponds to the provisions of section 187B for the purpose of enforcing listed building control. The advice in this Annex applies equally to injunctions sought under section 44A, but English Heritage are also empowered to seek an injunction under section 44A, as well as the LPA.

Injunctions under section 222 of the local Government Act 1972

5.4 It is unlikely that a LPA will need to use section 222 of the Local Government Act 1972 now that section 187B is available; see also *City of London Corporation v Bovis* [1992] 3 AllER 697.

The operation of injunctive proceedings

5.5 It is for the LPA to decide whether to initiate injunctive proceedings. LPAs may find it helpful to consider whether:

- they have taken account of what appear to be the relevant considerations, including the personal circumstances of those concerned, in deciding that it is necessary or expedient to initiate injunctive proceedings;
- there is clear evidence that a breach of planning, listed building, or tree control has already occurred, or is likely to occur, on land in the LPA's area;
- injunctive relief is a proportionate remedy in the circumstances of the particular case;
- in the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the Court's order on the person or persons to whom it will apply.

5.6 Most applications are initiated by Originating Summons in the Queen's Bench Division of the High Court. An injunction may be sought by the LPA in the absence of the person against whom it is sought ("*ex parte*"); or proceedings may take place in which the parties are represented ("*inter partes*").

5.7 To minimise the possibility of incurring wasted costs on abortive proceedings, the LPA will need to make their own best assessment (if necessary, by obtaining Counsel's opinion) of the likely outcome before deciding to initiate proceedings. In assessing the possible costs, the LPA will wish to bear in mind that, if an interlocutory injunction is granted, the Court may require the authority to give an undertaking in damages which may come into play if the LPA is ultimately unsuccessful at trial (in which the LPA seek a permanent injunction). However, in the light of the House of Lords' approach in *Kirklees MBC v Wickes Building Supplies Limited* [1993] AC 227, it appears unlikely that the Court will require a LPA to give any such undertaking where the LPA is properly exercising its lawful enforcement functions.

5.8 In a judgement given on 7 February 1994, in the case of *Runnymede Borough Council v Harwood* [1994] 1 PLR 22, the Court of Appeal held that section 187B of the 1990 Act empowered the Court to restrain a breach of control by an interlocutory (that is, interim) injunction. In granting an interlocutory injunction, the Court may decide to allow a period for compliance or, as in *Hambleton v Bird* [1995] EGCS 67, suspend the injunction (in that case to allow the respondent gipsies to make alternative arrangements).

5.9 In a separate judgement also given on 7 February 1994, in *Croydon London Borough Council v Gladden* [1994] 1 PLR 30 the Court of Appeal held that the power conferred by section 187B of the 1990 Act permitted the granting of a mandatory injunction and was not restricted to prohibitory injunctions (the Court granted a mandatory injunction in that case).

5.10 The decision whether to grant an injunction is always in the absolute discretion of the Court. In *Bovis* (cited in [paragraph 5.4](#)) the Court expressed the "essential foundation" for the exercise of discretion as whether it could be inferred that the respondent's unlawful operations would continue unless and until effectively restrained by the law and that nothing short of an injunction would be effective to restrain those operations. This "test" was endorsed in the *Hambleton* case cited in paragraph 5.8.

Persons whose identity is unknown

5.11 Section 187B(3) (which also applies to new section 214A, with corresponding provisions in section 44A of the Listed Buildings Act) effectively enables the Court to grant an injunction against a person whose identity is unknown. Nevertheless, LPAs will need to identify, to the best of their ability, the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:

- photographic evidence of the persons concerned;
- affidavit evidence sworn by the LPA's officers;
- reference to chattels on the land, known to belong to, or be used by, that person (eg a registered motor vehicle); or
- other relevant evidence (such as a name by which the person is commonly known, even though it is not his or her proper name).

When applying to the Court, the LPA will have to provide affidavit evidence of their inability to ascertain the identity of the person, within the time reasonably available, and the steps taken in attempting to do so.