Neutral Citation Number: [2024] EWHC 3440 (KB)

Case No: KB-2024-003315

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
In the matter of Section 222 of the Local Government Act 1972
and Section 187B of the Town and Country Planning Act 1990

Royal Courts of Justice
Strand, London
WC2A 2LL

Date of hearing: 22 November 2024

Before:

MR JUSTICE FREEDMAN

- -

Between:

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES	**Claimant**
- and -	
(1) PERSONS UNKNOWN FORMING AN UNAUTHORISED ENCAMPMENT AND/OR OCCUPYING FOR RESIDENTIAL PURPOSES (including temporary occupation) WITH OR WITHOUT VEHICLES ON ANY OF THE 8 SITES WITHIN THE LONDON BOROUGH OF RICHMOND UPON THAMES LISTED ON SCHEDULE 1 ATTACHED TO THIS CLAIM **(2) PERSONS UNKNOWN DEPOSITING WASTE ON ANY OF THE 8 SITES WITHIN THE LONDON BOROUGH OF RICHMOND UPON THAMES LISTED ON SCHEDULE 1 ATTACHED TO THIS CLAIM**	**Defendants**

- -

STEVEN WOOLF (C) (instructed by **South London Legal Partnership**) for the **Claimant**
THE DEFENDANTS did not appear and were not represented

- -

APPROVED JUDGMENT

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MR JUSTICE FREEDMAN :

1. Although I heard this matter on Tuesday 19 November 2024, I am giving this judgment orally on Frida 22 November 2024 as an *ex tempore* judgment.

Introduction

2. This is an application for an interim judgment against persons unknown who are defined in the description of the first and the second defendants. It is technically an application in the nature of a "Newcomer injunction". The claimant preferred to treat it as a final hearing but it has been listed and notified as an application for an interim order. It is appropriate to treat it as an application for an interim order.

3. The application has been presented by Mr Steven Woolf of counsel on behalf of the claimant. It is supported in particular by the first witness statement of Yvonne Feehan dated 17 September 2024. She has made additional witness statements, in particular a third witness statement dated 18 November 2024.

4. In the course of the hearing on 19 November 2024, the court identified a particular concern as to the apparent absence of evidence to explain why it was the case, as set out in the first sentence of paragraph 20 of the first statement of Ms Feehan, that there is no transit site in the Borough for travellers and there is no negotiated stopping policy in place.

5. The reason for that concern was because one of the matters to take into account in a decision as to whether to grant an injunction of this kind, is as set out in the case of *Wolverhampton City Council v London Gypsies and Travellers & Ors* [2023] UKSC 47 at para 189:

> "Whether the local authority has complied with its obligations (such as they are) properly to consider and provide lawful stopping places for gypsies and travellers within the geographical areas for which it is responsible".

6. The court, therefore, mindful of this lacuna, gave an opportunity to the claimant to supplement its evidence with somebody with more first-hand knowledge about planning policies and control, namely Ms Feehan. That then led to the provision of a witness statement on 21 November 2024 from Joanne Capper, to which I shall make reference later in this judgment. There was also helpfully provided on the same day a supplementary skeleton argument of the claimant.

7. It will be appreciated that that evidence was not served on the defendants and it will be a part of this order that when the order is to be served, the service package will contain that witness statement and exhibits, as well as the skeleton arguments.

8. The nature of the application is to prevent the defendants from forming an unauthorised encampment or entering to occupy for residential purposes or depositing waste on any of eight sites within the London Borough of Richmond upon Thames which are listed in a schedule to the draft order. Those eight sites have been selected on the basis that they are said to be particularly vulnerable and where there have been activities such as unauthorised occupation and/or depositing of waste, they are said to be sites with

environmental sensitivities and valued by local people. They are said to be prominent, open and in regular use, such as unauthorised occupation would cause disruption. I shall return in more detail to those sites in this judgment.

9. The application is made against unknown persons only because the claimants have not been able to identify reliably the names and addresses of persons who have in the past been in occupation or have deposited waste on particular sites.

10. The leading authority in respect of this kind of application, particularly in relation to newcomer injunctions, is the above-mentioned case of *Wolverhampton City Council*, which I shall refer to as "*Wolverhampton*".

Background

11. The application relates to the above-mentioned eight sites in the Borough. The claimant submits that there is a compelling need on the evidence to prevent anti-social behaviour and to enforce planning control on the sites, which cannot be enforced by other methods. The witness statement of Yvonne Feehan, to which I have referred, sets out the position in some detail. She is the Parks Service Manager of the claimant. She refers to the fact that there are 131 green sites which might require protection. However, she accepts (at paragraph 14 of her witness statement) that many are not considered particularly vulnerable to an unauthorised encampment or to the depositing of waste. For example, they are too small, the access is restricted or they are not as heavily used by the community or as sensitive.

12. As regards the eight specified sites, they are all close to residential areas. They are identified and described at paragraph 18 of the witness statement. They comprise the following sites:

i) Ham Lands

ii) Ham Riverside Drive Open Space

iii) Ham Riverside Pitches

iv) Kew Green

v) Old Deer Park

vi) Richmond Green

vii) Ham Common

viii) King George's Field

13. There follows a description of the nature of the sites in question and the purposes for which they are used by the community. The particular environmental sensitivities in relation to the properties and the reasons why they are popular for the community are described in paragraph 18 of that witness statement. In the witness statement of Joanne Capper of 21 November 2024, she states that:

> "These eight sites comprise about 24% of the green space managed by the Council and about 6% of the total green space in the Borough. The Council does not manage the entirety of the green space in the Borough because there are large areas managed by others, comprising six sites of significant size, namely Bushy Park, Hampton Court Park, Ham House, Kew Gardens, Marble Hill Park and Richmond Park".

14. At paragraph 33 of the first statement of Ms Feehan she says:

> "The hope is that by identifying the eight most vulnerable and sensitive sites and ensuring notices are placed on all the fences and gates, any person or group of people seeking to occupy green spaces in the Borough will not occupy those eight sites but go elsewhere".

15. This is not the first application by the claimant to the court in respect of green spaces in injunctions sought against persons unknown. In March 2019, an injunction was granted in respect of all 131 green spaces. The matter came on a return date before Mr Justice Nicklin along with many other cases. In the course of that hearing, Mr Justice Nicklin made points of general application which he then applied to the various applicants before him. In the case of the claimant, their injunction was discharged because Mr Justice Nicklin was not satisfied that the provisions for alternative service to notify those people affected were sufficient. That case went to the Court of Appeal which reversed the reasoning in respect of the alternative service. However, the claimant did not proceed with the injunction at that stage. It will be appreciated that those cases were the cases that went to the Supreme Court and were dealt with in the judgment in *Wolverhampton*. The claimant awaited the judgment of the Supreme Court in order to consider further what protection it should seek.

16. As regards alternative service, the effect of the decision of the Supreme Court was as follows. First it is necessary to identify as far as possible the persons affected by the injunction. The actual or intended respondents to the application must be defined as precisely as possible by name or in some other way (see paragraph 221). The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other or more precise way. I shall return to that later in the judgment.

17. With all of that in mind, applications were made for alternative service. There was an order of Mr Justice Martin Spencer dated 16 October 2024 which was then amended on 22 October 2024. That provided that there was permission to serve the claim form, particulars of claim, application for an injunction and supporting evidence on the defendants pursuant to CPR 6.15(1) and CPR 6.27. The alternative place for service was by the alternative method set out at sub-paras (a) to (d), namely:

> "a) Affixing a copy of the court proceedings in a transparent envelope to a post in a prominent position or on a gate at the entrance to the eight sites listed on schedule 1 attached to the claim.

> b) Publishing a copy of the court proceedings on the claimant's website.
>
> c) Publishing details of the claim and where to access the claim documents in the Richmond and Twickenham Times.
>
> d) Making a copy of the court proceedings available at the front desk of the claimant's offices at Civic Centre, 44 York Street, Twickenham TW 1 3BZ".

There is evidence to show that all four methods have been satisfied.

Need for Injunction

18. The evidence of Ms Feehan, particularly at paragraphs 33 to 43 under the heading: "Why an Injunction", identifies the particular experiences that have led to the application being made. It is said that there is a compelling need to prevent anti-social behaviour and to enforce planning control on the sites that cannot be met by other measures other than an injunction. It is said that there is evidence of real harm, namely to sites, anxiety to local residents and considerable financial loss. The evidence of Ms Feehan at para 44 sets out unauthorised use or occupation at the eight sites in the period between January 2019 and August 2024. The evidence is supplemented by photographs showing the extent of the occupation on various sites since 2019 and the impact of that occupation on the green spaces concerned.

19. The biggest problem associated with the encampments is fly-tipping and waste, which is said to be a source of considerable pollution and danger to the public. The harm will depend upon the content of the waste but in addition to household waste, waste can cause an imbalance in the fauna and flora. There has also been physical damage to property when attempts have been made through gates and barriers to prevent entrance and there is photographic evidence about that. It is said that there have been complaints of noise, nuisance and anti-social behaviour. The encampments are in residential areas close to houses and it is therefore a source of nuisance to residents in an otherwise quiet area. Numerous complaints have been received. In the exhibit YF6 there are examples of the types of complaints that have been received.

20. Typically, the visits are by a number of caravans and vehicles, sometimes a single caravan and sometimes as many as 40. The numbers of persons can be several tens of persons on occasions. The period of occupation varies. Sometimes they have simply been moved on and they have left fairly promptly. On other occasions, it has taken many days for them to leave, for example on 14 May 2020 at Ham Riverside, the travellers remained on site for 21 days before being evicted.

21. The way in which the matter has been addressed has been in different ways, but sometimes it has been by seeking a specific possession order, for example in the Ham Riverside example. Another example is Kew Green, where on 18 April 2023, ten caravans and approximately 35 to 40 persons encamped. A possession order was obtained and enforced. No sooner had the occupiers vacated Kew Green than they returned just four weeks later causing the April 2023 possession proceedings to be restored.

22. The most recent incidents of occupation have been in Ham Common and King George's Field. In Ham Common, on the evening of Friday, 26 July 2024, a significant number of vehicles, caravans and individuals arrived and quickly established an encampment. Council officers attended on Saturday morning and encountered at least 16 cars, 21 vans and 20 caravans, together with over 100 adults and children and eight loose dogs. This increased to 40 caravans and approximately 32 vans and 16 cars, albeit that it is difficult to be accurate due to the constant vehicle movements on and off site.

23. On 1 August 2024 the Council was granted an urgent possession order and the group were evicted on the same day under a writ of possession enforced by High Court Enforcement Officers, a Park guard together with assistance from the police. The group were followed out of the area but half of the group gained entry on to Hampton Court Green, which land includes a Royal Palace. Having been blocked in by staff and after negotiation with staff or the police, the group was forced to leave that site. They then set up an encampment at the Hawker Centre in Ham, which is within the Royal Borough of Kingson upon Thames. There are photographs of this encampment contained in the exhibit YF5.

24. The occupation at King George's Field occurred on 5 August 2024 following the eviction from the Hawker Centre to which I have referred. There were removed concrete posts so as to gain access on to the site and there were a similar number of caravans, vans and cars as that described in the incident in Ham Common. On 9 August 2024, the Council again secured an urgent possession order and the group were evicted under a writ of possession executed by High Court Enforcement Officers with Parkguard and assistance from the police. The group then moved to Woking according to the Council's contract manager, who lives in Woking and recognised the group. There are photographs at YF5 about this encampment.

25. The evidence of Ms Feehan at paragraph 42 is that in addition to the harm caused to the amenities of the land and physically to the land itself, there are costs associated with Council staff having to clear up the waste and undertake restoration work. Whilst an encampment is present there are costs incurred to the claimant to engage additional staff from enforcement contractors, the Parkguard as well as Bailiff/High Court Enforcement Officer costs which can cumulatively amount to tens of thousands of pounds.

26. It also impacts upon the ability of the staff to attend to other obligations across the Borough and to attend to other green spaces. There is also a considerable amount of time spent preparing evidence for court and engaging solicitors and counsel for court hearings. The evidence is that the most recent traveller encampments in late July and August 2024 of Ham Common and King George's Field resulted in total costs in excess of £40,000 in each case. These are the most recent of the incidents described in the evidence. This judgment could have been lengthened by referring to the details about other incidents, but it should be noted that in 2023 there were incidents described at Kew Green of 18 April 2023 (referred to above), 16 May 2023 (referred to above) and 2 June 2023. In respect of Richmond Green there was an incident of 13 September 2023.

Relevant Legal Principles

27. The relevant legal principles have been oft repeated, and I repeated them in **Basingstoke & Deane BC v Loveridge case [2024] EWHC 1828 (KB), at paragraphs 11 to 22 as follows:**

"11. The court's power to grant injunctions is wide-ranging and is derived from the Senior Courts Act 1981, section 37(1) , which provides:

"(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so."

12. The Town and Country Planning Act 1990, section 187B provides:

"187B Injunctions restraining breaches of planning control

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section 'the court' means the High Court or the county court."

13. The underlying cause of action in the claim brought under section 187B is a breach of planning control.

14. The Town and Country Planning Act 1990 at section 55(1) defines development as:

"… the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

15. Section 55(3) of the Town and Country Planning Act 1990 provides:

"For the avoidance of doubt it is hereby declared that for the purposes of this section—

(a) …

(b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—

(i) the superficial area of the deposit is extended, or

(ii) the height of the deposit is extended and exceeds the level of the land adjoining the site."

16. Pursuant to the Town and Country Planning Act 1990, section 57(1) , planning permission is required for the carrying out of any development of land. Planning permission may be obtained by express grant or by deemed grant through permitted development rights. Carrying out development as defined in the Act without the required planning permission constitutes a breach of planning control; see section 171A(1) . The breaches of planning control complained of in the claim in which the injunction was sought and in this application seeking the continuation of the injunction are primarily the material change in the use of the relevant land to a temporary travellers' site and by the depositing of refuse or waste materials without the requisite planning permission.

17. The cause that underlies the claim, brought pursuant to section 187B , namely breach of planning control, is not one on which the court can adjudicate. The court is not entitled to reach its own independent view on the planning merits of the case. The decision as to whether something is or is not a breach of planning control is a matter for the local planning authority or the Secretary of State on appeal and not the court, as confirmed by the House of Lords in *South Buckinghamshire District Council v Porter and another [2003] UKHL 26; [2003] 2 AC 558 ("Porter")* at paragraphs 11, 20, 29 and 30.

18. At paragraph 29 in *Porter* , Lord Bingham said that the discretion must be exercised judicially, meaning 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."

19. The Local Government Act 1972 at section 222 above referred to provides:

"(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—

(a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and

(b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment."

20. Section 222 does not create a cause of action. It confers on local authorities the power to bring proceedings to enforce obedience to public law without the involvement of the Attorney General: see *Stoke-on-Trent City Council v B&Q (Retail) Limited [1984] AC 754* .

21. The principles as to the exercise of the court's discretion under section 222 were identified in *City of London Corporation v Bovis Construction Ltd [1992] 3 All ER 697 at page 714* per Bingham LJ and include:

"… the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until

effectively restrained by the law and that nothing short of an injunction will be effective to restrain them: see Wychavon at page 89."

22. When an injunction is granted under section 222 , a power of arrest may be attached to the injunction pursuant to the Police and Justice Act 2006, section 27 ."

28. In the *Wolverhampton* case, among its considerations the Supreme Court considered many issues relating to so-called traveller injunctions against newcomer persons unknown. The court found that injunctive relief can be granted against newcomer persons unknown including final injunctive relief. It held that such an injunction is neither interim nor final in substance and is instead a form of without notice relief (see paragraph 139). Throughout the judgment the court examined the distinguishing features of such injunctions. The principle of when such relief can and should be granted were set out especially at paragraph 167 where the court set out the following:

"These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

(ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (i.e. permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both

to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

(v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries".

29. In the judgment of the Supreme Court at paragraphs 188 to 237, the practical application of these principles affecting the application for a newcomer injunction in traveller-type injunctions and safeguards to accompany the making of the order were considered.

30. The court will now consider the matters that have to be considered in order to justify such an injunction as referred to in paragraph 167 and in the subsequent paragraphs of the judgment in *Wolverhampton*.

Compelling Justification for the Remedy

31. The guidance at paragraph 167(i) of *Wolverhampton* requires there to be a compelling need, sufficiently demonstrated by the evidence, for the remedy that is sought, which is not adequately met by other measures available to the claimant. The compelling need is described at para 188 as the: "Overarching principle that must guide the court at all stages of its consideration". At para 218 it was also held that there must be a strong probability that a tort or breach of planning control or other aspect of public law was to be committed and that this will cause real harm.

32. At para 189 there were identified three preliminary questions, namely:

i) whether the local authority has complied with its obligations to consider and provide lawful stopping places for gypsies and travellers;

ii) whether the local authority has exhausted all reasonable alternatives, including whether it has engaged in dialogue with the gypsy and traveller community to try and find a way to accommodate their way of life by giving them time and assistance to find alternative or transit sites or permanent accommodation;

iii) whether the local authority has taken steps to control or prohibit unauthorised encampments and related activities by using other measures and powers at its disposal.

33. The court will now consider these three preliminary questions and their application to the instant case.

Preliminary Question 1 - The Obligation to Consider and Provide Lawful Stopping Places

34. The relevant guidance in *Wolverhampton* is at paras 190 to 202. As noted in the introduction, it was recognised by the claimant that there was no transit site in the Borough for Travellers and no negotiated stopping policy in place. The evidence prior to the statement of Ms Capper was that the claimant's officers considered the health needs and offered welfare and safeguarding checks to gypsies and travellers: see Ms Feehan's first statement at para 20. Further, they could tolerate stopovers for a short time: see paras 21 and 23. Further, the claimant took its public sector equality duties seriously and in particular considered the wellbeing needs of the traveller community within its public health joint strategic needs assessment.

35. In her evidence at paras 53 to 54, Ms Feehan gave evidence relating to the steps that are taken by the claimant when an encampment comes to be established. The practice was to seek out a welfare assessment to enable the claimant to establish whether there were vulnerable or disabled members of the group in need of medical attention and any children. The information would then be forwarded to the appropriate Council. If advice and assistance were sought, it would be given.

36. Ms Feehan also exhibited an Equality Impact and Needs Analysis: see paragraph 31 of her statement. A part of that analysis reads as follows:

- The Gypsy and Traveller Community are most likely to be impacted by this proposal. Gypsies and Travellers are protected from discrimination by the Race Relations Act 1976 (amended 2000), the Human Rights Act 1998 and the Equalities Act 2010, together with other ethnic groups who are recognised in law as having a cohesive culture, language or set of values. There will be a negative impact on Gypsies and Travellers as they will be unable to set up unauthorised encampments on borough parks and open spaces and any Council owned land listed in the injunction.
- To mitigate the impact there will be clear communications regarding the new approach so that Gypsy and Traveller communities are aware. The new approach will allow Gypsies and Travellers to continue to travel through the borough. The proposal is for an injunction on similar terms to the previous interim borough wide injunction, however the sites that the injunction would apply to have been revised and are detailed in the below appendix.
- The Council is seeking to balance the needs of Gypsies and Travellers with those of the wider community, considering the adverse effect that unauthorised encampments and fly tipping has on the borough, its residents, businesses and visitors in both financial and non-financial terms.
- The process of seeking an injunction through the courts allows for debate and for an independent view to be taken by the court.
- To mitigate the impact, there will be clear communications regarding the Council's enforcement approach so that travellers are aware. Whilst welfare checks will no longer be necessary, if requested, we will continue to direct any Travellers' welfare issues to the relevant agency or department including medical treatment, surgeries and GPs. Referrals to such entities as housing, through Richmond Housing Partnership, or public health and education through Achieving for Children would be undertaken as appropriate.

37. At page 6 of that analysis, page 88 of the bundle, there were set out some statistics in relation to gypsy and traveller groups in relation to deprivation, low income groups, carers, single parents and health inequalities. As indicated above, the court was still concerned despite this evidence as to why there was no explanation about the absence of transit sites or stopping policies. That then led to the evidence of Ms Capper to which I have referred. That evidence can be summarised in the manner which has been set out in the supplemental skeleton argument of the claimant at paras 4-8.

38. Ms Capper refers to:

    i) The national guidance assessments of needs set out in Planning Policy for Traveller sites (updated in 2023) alongside the National Planning Policy Framework;

    ii) The claimant's updated research on gypsies and travellers 2023. That was just part of the local plan.

    This evidence identifies the need for pitches which can be accommodated within the existing site in Hampton. The assessment of need is said by Ms Capper as, 8-9, to be based on over ten years of survey data carried out by the Council in conjunction with the registered provider that manages the site, resulting in the assumptions applied being specific to the needs of the local population within the Borough.

39. As regards the local need arising for transit sites, it is clear that the research that was undertaken concluded that there was no indication of a local need having arisen in the Borough. This is supplemented by the claimant's active engagement with the Greater London Authority carrying out widespread London research as explained by Ms Capper at para 13.

40. The claimant also has the benefit of being part of the wider Surrey County Council approach to transit provision as explained in paragraph 14 of Ms Capper's statement. This refers to a co-ordinated approach between the County, the District and Borough Councils and Surrey Police. The evidence states that there is a need for two transit sites and that it is intended to deliver a site in the east that will be followed by a site in the west of the county. Ms Capper advised of the issue of negotiated stopping being considered on a London-wide basis by the Mayor of London.

41. On the basis of the evidence as supplemented by Ms Capper's recent evidence, I am satisfied that the claimant as the local authority has addressed and is addressing its obligations by considering lawful stopping places for gypsies and travellers within the areas for which they are responsible and by considering transit sites. Although it is right that they have not been provided, the following is to be noted:

    i) what is required is a consideration of whether they are required when reference is made to wanting to have evidence of their provision. That must be subject to a reasonable consideration of whether they are required at all;

    ii) even if that were wrong, if it were the case that provision ought to have been made but was not made, then it is to be borne in mind that the effect of that is not necessarily a pre-condition to the grant of relief but simply to be a highly

relevant criterion as to whether relief is just and convenient: see *Wolverhampton* at paras 189-202.

42. I am satisfied on the basis of the evidence that a case has been made out, at least for the purpose of an interim injunction, that the claimant has been considering and is continuing properly to consider these matters. Further, they are conscious of their responsibilities to the gypsy and traveller community as is evidenced by the matters to which I have made reference, about the provision of assistance and advice and about tolerance of encampments on a short term basis. I bear in mind also that this is not a case of an injunction throughout the county. These considerations would be more intense if it were the case that it was an injunction in respect of the Borough as a whole.

Preliminary Question 2 - Exhaustion of all Reasonable Alternatives

43. At paragraphs 189 and 203 of *Wolverhampton*, the Supreme Court raised the consideration that local authorities should seek to engage with gypsy and traveller communities in an attempt to encourage dialogue and co-operation and better understand the needs of the respective parties. There is limited evidence in this regard, however, the policies that have been published and the consideration of matters over the last ten years, as is referred to in Ms Capper's evidence, is *prima facie* evidence that there has been some consideration of these matters by people who must have had some contact with the relevant community.

44. Further, the application has been served by way of alternative service, now over a period of several weeks, and there has been no engagement by anybody in respect of the application. It therefore follows that it is an application that was likely to have come to the attention of interested groups. I bear in mind also that this is simply an application for interim relief and that on the return date the extent of consultation can be revisited, and in particular whether there are groups who might want to be heard in relation to these matters. There will also, no doubt, be consideration of this aspect afresh as to whether there are any further steps that the claimants could take in order to consult with relevant groups. For the purpose of the interim injunction application, sufficient has been done to address this issue.

Preliminary Question 3 - Steps to Control or Prohibit Unauthorised Encampment by Other Measures and Powers

45. At paragraphs 204-216 of the *Wolverhampton* judgment, the Supreme Court considered other measures and powers that might be used as an attempt to control and prohibit unauthorised encampment. If and to the extent that alternatives were available to an injunction, that might be relevant as to whether an injunction should be imposed. I shall refer to some of the powers that have been used. There has been reliance on the powers in the Criminal Justice and Public Order Act 1994, sections 77-78. There has also been consideration of the use of bye-laws and Public Space Protection Orders as a way of controlling and prohibiting unauthorised encampments.

46. The specific bye-laws and Public Space Protection Order ("PSPO") are exhibited to the third witness statement of Ms Feehan dated 18 November 2024. She refers back to paragraph 56 of her first witness statement where she referred to the usual procedure, which was to engage with the travellers and advise about the PSPO and the bye-laws. At paragraph 57 she stated that the process of eviction is either by the issue and service

of a removal direction requiring the travellers to leave under section 37 of the 1994 Act or by means of a removal order under section 78 of the 1994 Act. She stated that the process can take a long time and that travellers frequently try to avoid being removed. There may also be delay securing a hearing date from the court. Further, there was the evidence to which I have referred that when there were possession orders, the evidence was that they just moved on to other land. The penalties under the bye-laws which have been exhibited comprise limited fines.

47. In her conclusion in her third witness statement, at paragraph 5 Ms Feehan stated that the PSPOs and the bye-laws have not had the desired effect. The establishment of encampments, the occupation of the sites and the depositing of waste has continued despite these orders and bye-laws being in place for many years.

48. In the light of that, the submission is made that these alternative remedies are not adequate to address the persistent nature of the problem and the determination from time to time of people to come and create unauthorised encampments and to deposit waste on the various sites. I am satisfied from the evidence that this third preliminary question has been identified in such a manner as shows that the alternative methods have not proven sufficiently effective. That they are slow and cumbersome and that they are expensive. They have been attempted but they have not had the desired effect which an injunction is capable of having.

Injunctions Sought Against Unknown Persons

49. As identified at the beginning of this judgment, there is a requirement to try to identify named persons. However, as recognised in the *Wolverhampton* judgment at para 221, that has not been achieved. Ms Feehan gives evidence at paragraphs 45-48 about how there has not been reliable information of the identities of those involved in the previous occupations, such that the application comes against unknown persons.

The Matters to be Satisfied for an Interim Injunction

50. The starting point is the case of *American Cyanamid Co. v Ethicon Limited, (No 1)* [1975] AC 396. That has to be modified because the nature of the injunction sought is one of a precautionary measure, what used to be a *quia timet* injunction. The principles in respect of a *quia timet* injunction have recently been set out in the judgment of *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 by Marcus Smith J.

51. I shall consider those thresholds as regards *American Cyanamid*. That can be summarised in a very brief way as follows:

i) the claimant must show that there is a serious issue to be tried;

ii) it must be shown that damages would not be an adequate remedy to compensate the plaintiff;

iii) if damages are an inadequate remedy it must be shown that the balance of convenience is in favour of the claimant, that is to say, that the irremediable prejudice of not granting an order would outweigh the irremediable prejudice to the defendants of the grant of an injunction;

iv) there can be special factors such as matters of public policy or public interest, or the effect of granting or refusing the injunction on non-parties which should be taken into consideration as to whether it is just and convenient to grant an injunction in all the circumstances.

52. These principles are guidelines and not a straitjacket where the function of the court is to hold the position as justly as possible pending final determination of a triable issue at the final hearing.

53. The fact that the injunction is a precautionary injunction, the test in respect of a *quia timet* injunction was set by Marcus Smith J in *Vastint* to be as follows at paragraph 31(3):

> "It is a 'Two-stage test':
>
> a) First, is there a strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant's rights?
>
> b) Secondly, if the defendant did act in contravention of the claimant's rights, would the harm resulting be so grave and irreparable that notwithstanding the grant of an immediate interlocutory injunction (at the time of actual infringement of the claimant's rights) to restrain further recurrence of the act complained of, a remedy of damages would be inadequate?"

54. As regards the second of those stages at para 31(5), what was said in *Vastint* was as follows:

> "…it is necessary to ask the counterfactual question: assuming no *quia timet* injunction, but an infringement of the claimant's rights, how effective will a more-or-less immediate interim injunction plus damages in due course be as a remedy for that infringement? Essentially, the question is how easily the harm of the infringement can be undone by an *ex post* rather than an *ex ante* intervention, but the following other factors are material:
>
> (a) The gravity of the anticipated harm. It seems to me that if some of the consequences of an infringement are potentially very serious and incapable of *ex post* remedy, albeit only one of many types of harm capable of occurring, the seriousness of these irremediable harms is a factor that must be borne in mind.
>
> (b) The distinction between mandatory and prohibitory injunction".

55. The reference to the distinction between a mandatory and prohibitory injunction is that the court will at an interim stage be much slower to order an injunction which compels the defendant to do something, as opposed to an injunction which merely obliges the defendant not to interfere with the claimant's rights.

Application of These Tests to the Instant Case

56. I am satisfied on the basis of the evidence that there is a serious issue to be tried. The acts of occupation, use and (depositing of?) waste at the eight sites in question amounts to trespass of the land and breaches of planning control. There has been demonstrated by the evidence a compelling need for the protection of the eight sites, including the enforcement of planning control and the prevention of anti-social behaviour. It has also been proven to the standard required for an interim injunction that other measures available to the applicant local authorities including bye-laws and the provisions under the 1994 Act do not provide adequate protection.

57. Further, I am satisfied on the evidence of the repeated instances of many people coming on to the land in the way which has been described in Ms Feehan's evidence, that the requirements in respect of a *quia timet* injunction have been adequately established. The consequences of the infringements are serious, affecting the enjoyment of the land and people's ability to live in peace in the neighbourhood, as well as causing hazards to the environment and great cost to the claimant. I am satisfied there is a strong probability of a breach of these rights if no injunction is granted, having regard to the repeated instances of the encampments, particularly having regard to the most recent ones of July and August of 2024.

Procedural Protections

58. Following the *Wolverhampton* case, the court must ensure that there are procedural protections that are embodied in the form of the order. I am satisfied that the order does embody these procedural protections:

    i) Definition of the persons unknown: I am satisfied that the injunction sought defines clearly the enjoined behaviour so that the "Persons unknown" is not everybody but is those people who might form an unauthorised encampment and the like, as defined in paragraphs 1 and 2. In paragraph 2 there is an error in that the words: "Intending on" need to be omitted so that it reads: "Persons unknown depositing waste on any of the eight sites…"

    ii) Definition of the conduct referred to in the order: the order clearly defines the land in question. It clearly defines the prohibited activities, will clearly define the duration. Further, it contains explanatory notes in the order so that the persons unknown would know and understand that which is prohibited.

Territorial Limitations

59. The injunction is not an injunction in respect of the entirety of the Borough or the entirety of the green spaces. I have referred above to the evidence of Ms Capper at paras 7 and 8. The reasons why these spaces have been chosen are set out above and that has been referred to.

Temporal Limitations

60. In this case the injunction is an interim injunction. It will be until a return date in just over three months from now. That takes into account the intervening Christmas period.

It also takes into account the fact that there are less incidents that occur in the winter than in the spring and summer months.

Taking Reasonable Steps to Bring the Application to the Attention of the Defendants

61. I have referred to that above, that the alternative service is designed to bring the injunction to the attention of all those who might be expected to come to the land. I am satisfied that that has been done by the alternative service. Further, it will be necessary with the order to provide the further evidence of Ms Capper as well as the skeleton arguments.

Cross-Undertaking as to Damages

62. As to the question of a cross-undertaking as to damages, it is ordinary in injunction proceedings brought by a local authority exercising a law enforcement function in a public interest, for a court not to require a cross-undertaking in damages: see *Kirklees Metropolitan Borough Council v Wickes Building Supplies Limited* [1993] AC at 227 (?) at 247 b) to e) and 275 c) to d). See also *FSA v Sinaloa Gold plc and Ors* [2013] UKSC 11; [2013] 2 AC 28. Lord Mance delivering the unanimous judgment of the court held that:

> "It remains the case that English law does not confer a general remedy for loss suffered by administrative law action. That is so, even though it involves a breach of a public law duty".

It may therefore be that there would be no remedy in damages.

63. In the circumstances of this case, there is no reason to depart from the ordinary position and to require the claimants to give an undertaking in damages in this application. However, it is to be noted that there can be an application of individuals to discharge or vary the injunction.

Liberty to Apply

64. I am satisfied that the relevant provisions are made within the order such as to enable any person affected by the order to come to the court and apply to have it discharged or set aside. In other words, although the order comes to newcomers effectively on an *ex parte* basis, they are able to come to the court at a much earlier stage and not to have to wait until a return date.

Disclosure Obligations of the Claimant

65. The claimant is aware that the duty of full and frank disclosure applies in relation to the making of this application against newcomers. The claimant is also aware that that duty of full and frank disclosure continues after the service of the injunction, because in effect it remains like an *ex parte* order until such time as each person comes on to the land. It therefore follows that for practical purposes that duty of full and frank disclosure will continue until the return day and the local authority understands that in the event that any material developments have occurred or that there have been any matters that have been omitted, it will have a continuing duty to come back before the court.

66. In addition to this, the matter will then come back for what would be in effect final relief and the provisional time, which can be firmed up, is at the beginning of March 2025. On that occasion it will behove the claimant to have to prove the justification for the continuation of the injunction and as to what period of time is required, particularly having regard to the strictures in *Wolverhampton* about generally not having injunctions which are unlimited in time and requiring review or renewal in the event that an extension is required.

Other Special Reasons

67. Reference was made above in relation to *American Cyanamid* about the possibility of other special reasons that might operate. There might be considerations against the granting of an injunction. In my judgment, there are no special factors to be borne in mind. It is recognised that there is arguably an Article 8 right where an application interferes with the right to a home. There is at least a strongly arguable case that a right under Article 8 does not extend to having a home on land that an individual does not own or occupy.

68. As regards the application interfering with the right to a family and private life, that is qualified and balanced against the rights of others. In the judgment of Mr Justice Butcher in *Rochdale Metropolitan Borough Council v Heron* [2024] EWHC 1653, at paragraph 60 the court said that:

> "An Article 8 right would appear to be a weak one because such persons do not have a home on land that they do not own".

He also made the point that an interference with the right to a family and private life is qualified and must be balanced against the rights of others. Further, not requiring an undertaking in damages does not close the door on an order for damages being made at the point of variation or discharge.

Power of Arrest

69. The court is satisfied that without a power of arrest, the ability to enforce the order will be very limited, having regard to the difficulty of identifying the persons concerned and the risk that people would just move away and then keep on returning. There is, therefore, sufficient for the court to make a power of arrest.

Conclusion

70. For all the reasons given it is appropriate to grant an interim injunction subject to refining the particular terms sought of the injunction in the draft order where they have to be completed, for example, in relation to timing and various other matters. An interim injunction is, therefore, made.

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(This Judgment has been approved by Mr Justice Freedman.)

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