



Neutral Citation Number: [2022] EWHC 1731 (Admin)

Case No: CO/4149/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/07/2022

Before :

ANTHONY ELLERAY QC
SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

THE QUEEN ON THE APPLICATION OF SO **Claimant**

- and -

THANET DISTRICT COUNCIL **Defendant**

- and -

(1) KENT COUNTY COUNCIL **Interested**
Parties

(2) THE CROWN ESTATE

**(3) THE JUSTICES AT
MAIDSTONE MAGISTRATES'
COURT**

Mr Tim Baldwin and Ms Lara Simak (instructed by Watkins and Gunn) for the Claimant
Mr Andrew Lane (instructed by Thanet District Council Legal and Democratic Services)
for the Defendant

Hearing dates: 28 June 2022

APPROVED JUDGMENT

*This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives.
The date and time for hand-down is deemed to be 10:30am on 8 July 2022.*

Deputy High Court Judge Anthony Elleray QC:

1. SO is a female member of the McGinley family of Pavee Travellers. She has lived in a caravan with her mother and siblings since 14 June 2021 on a site. The site is part of Ramsgate Port and is part of an old car park of what used to be a ferry terminal. It was used to park transported vehicles.
2. The site is partly owned by Thanet District Council (“the Council”) and is otherwise leased by it from The Crown Estate.
3. On about 13 September and 30 November 2021 the Council served direction notices pursuant to s77 Criminal Justice and Public Order Act 1994 in respect of the site defined as Ramsgate Marina, Military Road, Ramsgate, Kent CT11 9FT.
4. On 7 December 2021 SO issued this claim for judicial review challenging the legality of the notices. Her grounds of challenge have been amplified by a reply dated 17 January 2022 to Summary Grounds of Opposition served with the Council’s acknowledgement of service dated 4 January 2022. There were Detailed Grounds of Opposition of 3 May 2022 and the Claimant’s Reply to the same on 20 May 2022.
5. By order dated 5 April 2022 Mrs Justice Lang DBE ordered SO’s oral permission application to apply for judicial review to be adjourned for a “rolled up” hearing providing that, should permission be granted, the Court would proceed to determine the claim. Permission had been refused on paper on 19 January 2022 by UT Judge Elizabeth Cooke sitting as a Deputy High Court Judge.
6. Mr Tim Baldwin with Miss Lara Simak appears for SO. Mr Andrew Lane appears for the Council.

Background

7. SO and members of her family have occupied unlawfully a number of local sites which the Council has recorded. In May 2021 there was occupation of Palm Bay Recreation Ground. The Council sought clearance of that site.
8. On 27 May 2021 the Magistrates’ Court was asked to make an order under s78(1) of the 1994 Act. The Council sought the order. The order sought was for the removal of vehicles on the Palm Bay site and of persons residing there.
9. The Justices declined to make such order. Their concern was children of two mothers on site. One was an unborn child with whom the mother was pregnant. The other was mother to a child being treated at Great Ormond Street Hospital.
10. The Council determined to make temporary accommodation available to the families concerned.
11. It proposed temporary accommodation on the Port site. On 21 May 2021 the relevant mothers had signed code of conduct forms relating to the site. One such form was signed by SO’s mother. The form stated “The use of the tolerated site and welfare to be reviewed every three weeks until further notice”.

12. On 3 June 2021 SO and her relevant family visited the site. They relocated there on 14 June 2021. They have five caravans.
13. On 29 August 2021 the Council noted as was the case that other family members with six further caravans had without consent broken into the site.
14. On 13 September 2021 the Council made a direction that persons residing in such vehicles should leave the site and remove their vehicles from it. The direction was made under s77(1) of the 1994 Act. It related to persons resident in vehicles within the Council's land on any unoccupied land or any unoccupied land without the consent of the occupier.
15. On 13 September 2021 the Council served that s77 direction on seven persons who were late incomers.
16. On 28 November 2021 the Council made a further s77 direction which on 1 December 2021 was served on other caravans including that of the mother of SO and which was occupied by SO.
17. The Council's strategy had been to distinguish caravans which had no permission to be on site from those of the two families allowed on site on 14 June 2021.
18. In the latter's regard, the temporary five months that had been discussed in June had run their course. Further the Council understood by then that one of the two babies had sadly not survived child birth and the other had responded to hospital treatment.

Judicial Review

19. The claim for judicial review was issued on 7 December 2021. It has sought quashing of the s77 directions. It has further sought an order that the Council should produce a lawful policy for the management of unauthorised sites. An anonymity order was sought for SO.
20. On 7 December 2021 Mrs Justice May DBE made an order in respect of anonymity and an injunction preventing pursuit of matters pending consideration of the claim.
21. On 18 January 2022 UT Judge Elizabeth Cooke DHJ refused permission to seek judicial review. She observed the Council explaining that permission to occupy was temporary and had been withdrawn. She noted the Council claimed proper notice was provided to the justices and that welfare enquiries were made. She did not consider want of proper site facilities was a reason why s77 directions should not be served.
22. On a renewal of application for permission on 5 April 2022 Mrs Justice Lang DBE directed the Council to serve a witness statement with exhibits addressing various matters which she raised. On that date the judge made the order for a rolled up hearing.
23. Ms Turner made for the Council a witness statement with exhibits on 3 May 2022. She has been an employee of the Council involved in relevant matters.
24. Ms Karen Constantine made a statement for SO on 20 May 2022. She is a Kent County Councillor who has been involved in Traveller problems and was part of the site inspection on 3 June 2021.

25. On 7 June 2022 SO applied to amend her Statement of Facts and Grounds. She did so on the basis that Ms Turner's evidence had given further details and fortitude to her arguments. The Council in response amended its Detailed Grounds of Opposition.
26. The Council has not objected to the amendments. I give leave to rely on them and deal with grounds as amended.

Ground 1

27. The first ground alleges that the decision to issue the s77 directions was unlawful. The claim is that both the September and November directions were unlawful and irrational.
28. The plea is that no reasonable council properly directing itself as to its powers, circulars and guidance would have served any s77 direction on all occupiers of the site in all the circumstances of this claim.
29. SO's first point is that she and all other occupiers of the site entered it with the consent of the owner.
30. In fact the Council authorised on 3 June 2021 two families, those with the relevant mothers who had the problem pregnancy and the child under hospital treatment, to enter the site.
31. The September s77 direction was not served on those families. Its direction to all occupiers was served on those who entered on 29 August 2021 without consent.
32. The November direction to all occupiers did include purported service on both families who had had consent, thus including SO.
33. The scheme that treated the subset including SO differently arose because of the children problems of the two mothers. That does not appear to me unlawful or irrational.
34. The first challenge is that the subset had entered with consent.
35. But the Council contends first that the consent in the subset's regard was understood to be temporary and up to five months. That is not challenged by evidence. SO has not made any statement, her solicitor and Ms Constantine do not in evidence challenge the point.
36. An attendant issue is whether the consent given to SO's subset was withdrawn.
37. S77(1) refers to "persons are for the time being residing in a vehicle or vehicles (b) on any other unoccupied land; (c) on any occupied land without the consent of the occupier".
38. The site was not being used as the ferry terminal was not being used and thus there was no reason to park vehicles on it. It does not appear to me arguable that the Council with title to the site could not invoke the procedure begun by the s77 directions.
39. There is an issue as to whether the subset including SO had their consent to occupy withdrawn as Judge Cooke understood the Council to contend.

40. I questioned with Counsel whether the subset's oral licence needed formal termination before the November s77 direction was given. It appeared to me in context that it was the November direction that was relevant, given the Council did not consider the September direction in fact applied to the subset.
41. No separate termination notice was given to the subset prior to the November direction.
42. But it appears to me that the November direction was on the basis that the temporary licence period was at an end. Further sadly the pregnant mother's child had not survived birth. Further the other mother's child had completed treatment in hospital.
43. In those circumstances I do not consider that making the November direction was either unlawful or irrational. Equally it does not seem to me that adding before the justices the November direction to the September direction was irrational or an abuse of process.
44. S77 defines "occupier" as "the person entitled to the possession of land by virtue of any estate or interest held by him". That was the Council.
45. I shall consider circulars and guidance under Ground 3 below.
46. It appears to me that given the Council were and are the occupier Ground 1 is unsustainable on its facts.

Ground 2

47. SO contends that service was not in accordance with s79 of the Act.
48. S79(2) provides "Where it is impracticable to serve a relevant document on a person named in it, the document shall be treated as duly served on him if a copy of it is fixed in a prominent place to the vehicle concerned; and where a relevant document is directed to the unnamed occupants of vehicles, it shall be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land in question at the time when service is thus effected."
49. Ms Turner explains that in regard to SO's mother there was an occupant member of the family present when she served the November direction which she then left wedged under the caravan step.
50. Mr Baldwin takes the point that the November direction was not fixed to the caravan. He suggests that it should have been taped on to the caravan.
51. There has sometimes been criticism by satellite litigation about the adequacy of service. However SO was aware of the service of the November direction and its applicability to her when issuing the claim.
52. It appears to me that it was personally served on a member of her family in occupation of the caravan. I do not consider that every member of the household needed separate service.
53. There is an issue as to whether wedging the direction under the caravan step was "fixing it to the caravan" for the purpose of s79(2).

54. But SO does not say that she was unaware of the November direction and its application to her or suffered any prejudice for the wedging under step.
55. The Council certified service on SO to the magistrates. I am not told of any challenge to it before them.
56. I consider Mr Lane to be correct in submitting that in the circumstances I should take SO to have consented to the service on her.
57. Further in the context of her mother's caravan, I consider that factually wedging the November direction under the step was sufficient and proportionate fixing for s79(2).

Ground 3

58. The third ground is unlawful failure to conduct lawful enquiries in concert with the relevant authority (Kent County Council) in breach of relevant circulars or guidance.
59. SO refers to the Gypsy Sites Policy and Unauthorised Camping, DOE Circular 18/94. That is annexed to the 2004 Guidance on managing unauthorised camping (ODPM Home Office 2004) "2004 Guidance". Further she refers to the "Guide to Effective Use of Enforcement Powers" Guidance Part 1 (ODPM 2006) "2006 Guidance".
60. As Mr Lane reminds me, SO and her family and their position was well known to the Council. As Ms Turner states there were two acute welfare concerns within the group, one mother's pregnancy and another mother's child being treated at Great Ormond Street Hospital.
61. That was the background to the offer for short-term, temporary use of the site by SO's subset.
62. The Council through her contend that site visits were undertaken, the County Council's Education Department was consulted and a health visitor was arranged to visit the two relevant adults.
63. Welfare forms sent to the magistrates detailed site visits by Council officers.
64. Paragraph 31 of the 2016 Guidance provides "Before commencing any action to evict an unauthorised encampment, local authorities have an obligation to carry out welfare assessments of the unauthorised campers. This may necessitate the involvement of local NHS bodies, where health issues are apparent."
65. Paragraph 32 of the Guidance then deals with drawing up a Direction. Paragraph 33 deals with service: "The document must be given directly to one of the named unauthorised campers."
66. The Council contends that in substance it complied with the guidance through ongoing review of the family circumstances.
67. It takes these points. It made an Equality Impact Assessment looking at the "provision of a short-term negotiated stopping site." Ms Turner refers to the Council's approach to welfare checks and gives examples of enquiries made in that regard. The Council

had direct dealings with the family of SO. The Council two notice approach allowed expressly for the identified medical needs of the subset.

68. Further Ms Turner exhibits the Council's Process for Dealing with Unauthorised Encampments (February 2021) confirming that officers considered that as well as government guidance.
69. Further, the Gypsy Sites Policy and Unauthorised Camping (DOE Circular 18/94) makes it clear that ultimately "it is a matter of local discretion to decide whether it is appropriate to evict an unauthorised Gypsy encampment (Paragraph 6)".
70. An amended ground complains that there was no Equality Impact Assessment in respect of the decision to evict SO and other travellers.
71. But this is the claim of SO. The Council had and has recorded what they knew or were told about SO. The amended grounds give little insight into any harm said to have been caused by lack of formal assessment.
72. Reference is made to the Public Sector Equality Duty (PSED) set out in s149 Equality Act 2010. It requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out activities.
73. Mr Lane cites the duty "is not a duty to achieve a result but a duty to have due regard to achieve the results identified in s149" (Turner J in *London & Quadrant Housing Trust v Patrick* [2020] H.L.R 3 at paragraph 42(ii)).
74. Further he contends that context is crucial in any approach to the PSED citing McCombe LJ in *Powell v Dacorum BC* [2019] H.L.R. 21 at paragraph 44. That LJ noted "The decision of a Minister on a matter of national policy will engage very different considerations from that of a local authority official considering whether or not to take any particular step in ongoing proceedings seeking to recover possession of a unit of social housing."
75. The context in this case included the temporary nature of the site arrangements, the Equality Impact Assessment relating to the site on 15 June 2021, revised on 6 August 2021, and that continued occupation was thought unlawful. Action against SO and her subset of encampers followed resolution of the two medical issues by the time of the November direction.
76. I agree with the Council that in all the circumstances sufficient, rational and lawful regard was had to the issues arising from the decision made concerning the need to move SO and her subset from the site.
77. A further amended ground relates to want of assessment in respect to compliance to the public sector equality duty in respect of disability or race of the occupants in respect of the decision to seek eviction. It complains of inadequate welfare enquiries by the Council but as noted it knew of SO and her subset and their position as Travellers. I am unpersuaded that there were further welfare enquires that it can be argued that the Council should have undertaken.

78. I conclude that I do not have arguable grounds to quash the September or November directions. Further I do not consider it arguable that I should order the Council to produce a policy for management of unauthorised sites in accordance with the 2004 and 2006 Guidance and Circular 18/94. I would comment that, had I been persuaded that some particular guidance or circular provision had been relevantly overlooked, I would have identified it but I would have needed to be persuaded of its relevance to my decision before making any order.
79. Complaint is made of poor sanitary conditions on site. The Council refers to matters it installed on site from 4 June 2021. Be that as it may, that does not affect the decision under challenge.
80. For the reasons discussed, I do not give permission to seek judicial review.
81. Within seven days of the handing down of this Judgment, Mr Lane and Mr Baldwin shall arrange for written submissions to be made to me in relation to costs