

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Royal Courts of Justice
Strand
London

Before THE HONOURABLE MRS JUSTICE HILL DBE

IN THE MATTER OF

WELWYN HATFIELD BOROUGH COUNCIL (Applicant/Applicant)

- v -

(1) GURINDER SINGH
(2) BAHADUR SINGH (Respondents/Defendants)

MR UPTON KC appeared on behalf of the Applicant
THE RESPONDENTS/DEFENDANTS did not attend and were not represented

JUDGMENT
13th OCTOBER 2023
(APPROVED)

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MRS JUSTICE HILL:

Introduction

1. This is an application for an urgent interim injunction, brought by Welwyn Hatfield Borough Council against Gurjinder Singh and Bahadur Singh. The application notice was sealed on 12 October 2023 and a claim form was issued at 3.36 pm on that date. This hearing is taking place just before noon on 13 October 2023.
2. The Applicant is the local planning authority in relation to land adjacent to Welwyn Footpath 058, Mornington, Digswell, Welwyn (title number: HD361168).
3. The Respondents are the owners of the land. The Claim Form identifies only the First Respondent, but both Respondents are identified in the evidence and in the Land Registry as the owners. The Claim Form will need a formal amendment to clarify this. The Applicant has confirmed this will be done forthwith.
4. The Applicant was represented by William Upton KC, who provided detailed written and oral submissions. The Respondents did not appear and were not represented.

Notice to the Respondents

5. The Respondents have not been given notice of the hearing.
6. Under CPR 25.3(1) the Court may grant an interim remedy on an application made without the usual notice having been given if it appears to the Court that there are “good reasons” for not giving notice. Here, the application has been made without notice because of the fear that if notice were given this would expedite the Respondents’ unauthorised work on the land in question, thereby defeating the purpose of an injunction. These are “good reasons” for not giving notice under CPR 25.3(1).
7. CPR PD 25A, para. 4.3(3) requires an applicant to take steps to notify the respondent informally of an application, “except...where secrecy is essential”. Again, I am satisfied that it was appropriate for the Applicant to proceed in this way, without notifying the Respondents for the reasons given in the preceding paragraph.
8. In addition, under CPR PD 23A, paragraph 3(1), an application may be made without serving an application notice where there is exceptional urgency. That test is met here.

The legal framework

9. The application is brought under section 214A of the Town and Country Planning Act 1990 (“the 1990 Act”). That provides that where a local planning authority such as the Applicant considers it necessary or expedient for an actual or apprehended offence under section 210 or 211 of the 1990 Act to be restrained by injunction, they may apply to the Court for such an injunction. There is a different but relevant power under 187B, allowing the local authority to apply for an injunction where there is an actual or apprehended breach of planning control.
10. What is particularly relevant to this application is that under section 210 of the 1990 Act:

“(1) If any person, in contravention of a tree preservation order
(a) cuts down, uproots or wilfully destroys a tree, or
(b) wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, or
(c) causes or permits the carrying out of any of the activities in paragraphs (a) or (b), he shall be guilty of an offence.”

11. A “tree preservation order” is used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of any size or species. A group will be included because its overall impact and quality merits protection. Orders covering a woodland protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the order was made. This is because the purpose of the order is to safeguard the woodland as a whole, which depends on regeneration or new planting.
12. In the combined appeals in *South Bucks District Council v Porter* [2003] UKHL 558; [2003] 2 AC 558, the House of Lords considered the exercise of the Court's discretion to grant injunctions pursuant to the parallel section of the Town and Country Planning Act 1990, section 187B. Their Lordships endorsed the approach set out in the judgment of the Court of Appeal at [2002] 1 WLR 1359, confirming that the Court has an original jurisdiction in respect of its exercise of discretion to grant an injunction pursuant to section 187B of the TCPA 1990.
13. As is well-known, in *American Cyanamid Co. v Ethicon Limited* [1975] AC 396 the House of Lords set out the principles that apply to the Court's exercise of discretion to grant an interim injunction in this context.

The factual background

14. The factual background to the application is set out in the evidence in support of the application which I have read. This comprises witness statements dated 12 October 2023 from three people who work for the Applicant in different capacities: Emma Meadows (a Tree Officer), Marty Smith (an Assistant Planning and Enforcement Officer) and Oliver Waring (a Landscape and Ecology Manager).
15. The land in issue in this case forms part of a wider area protected by a Tree Preservation Order with reference number TPO 260 2002. This prohibits the cutting down of specified trees referred to either individually, as groups or as areas of woodland. In this case, the affected trees are those protected as a Group G2 and as a woodland area W2. The order was made on 23 July 2002.
16. The land also benefits from a consent to fell and remove a number of specified trees, which are dead and possibly therefore dangerous. This only covers 34 larches and 1 sycamore, subject to conditions.
17. The Applicant's concerns about the land have arisen because of the following recent events,
18. On 9 October 2023, the Applicant's officers visited the land. It became obvious that one of the protected trees, a sycamore, had been felled. During the visit, the First Respondent was in the process of inaccurately marking trees for felling, by spraying

them. The First Respondent was evasive about what he was doing and suggested wrongly that the felling of a protected tree could be justified by the planting of a replacement. The First Respondent was advised to cease work, but did not do so, continued work.

19. This necessitated a second visit later in the afternoon of 9 October 2023. At that visit, the Applicant's officers witnessed the cutting down of part of a further protected tree, which then had to be treated as entirely lost. At this visit, the First Respondent was unable to explain why his marking of the trees was inaccurate.
20. On the following day, 10 October 2023, officers found work still underway with a digger, wilfully damaging the protected "self sets" of trees in the face of being told twice by officers that these sets are too protected. The digger was unsuitable for tree work. The First Respondent was told this, and was asked to remove it, or to use "track mats", but that advice was not taken.
21. A fourth visit took place on the morning of 12 October 2023. This showed further activity in the shape of new spray markings to the trees and the digger still on the site, suggesting that further work would be carried out, although no people were present at site that morning.
22. At the hearing Mr Upton KC informed me that a further visit took place this morning, 13 October 2023. No-one was on site and it did not appear that the digger was, but he submitted that very little weight can be attached to that because it may or may not mean that work will continue. I accept that submission.

Submissions and analysis

23. As noted above, the approach to be adopted in an application of this nature is the principled approach set out *American Cyanamid*.
24. I am satisfied, on the evidence I have read, that there is a compelling case that the apprehended offences under section 210, and apprehended breaches of planning control, will take place and continue to intensify unless the Respondents are restrained by an injunction. It is clear to me that if the injunction is not granted, there is a good basis for a concern that apprehended further offences will continue and that there will be further cutting down of protected trees. The actions of the Respondents and the planning history of the land shows that other statutory enforcement remedies have not been and will not be effective in this case. The threat of a prosecution for the offence has clearly not been effective; and would not remedy the situation. Accordingly, there is a serious question to be tried.
25. The Applicant as the local planning authority cannot adequately be compensated in damages for a breach of planning or control and is not required to give an undertaking in damages: *Kirklees MBC v Wickes* [1993] AC 227.
26. It is notable that each of the appeals in *Porter* concerned cases where the local planning authority were seeking mandatory injunction orders to remove persons who had taken up occupation of their land in breach of planning control. This case is different, in that the Applicant is seeking only to restrain the Respondents from doing further work which constitutes criminal offences or breaches of planning control.

27. I accept Mr Upton's submission that if the Respondents' rights as landowners under Article 1, Protocol 1 of the European Convention of Human Rights are interfered with, this is necessary and proportionate, so as to ensure the maintenance of proper planning control in the wider public interest.
28. In all these circumstances I am satisfied that the balance of convenience lies in preserving the current state of the land and enforcing proper planning control, in the public interest. The Respondents are plainly aware that permission is required to remove the trees, and further work should not be allowed without proper authorisation.
29. I am therefore content to grant the injunction sought. I have reviewed the draft injunction and discussed some of its terms with Mr Upton this morning. I am satisfied it is sufficiently clear and will make it obvious to the Respondents what they should or should not do.
30. I grant permission to deem good and sufficient service on the Respondents of this order a process of affixing it to the land, albeit that the undertaking has been given by the Applicant to try and effect personal service.
31. Accordingly, I grant the interim injunction in the manner sought. It will be subject to a return date on 27 October 2023 – that is two weeks from today – when an on notice hearing to the Respondents can take place, with a time estimate of two hours.

This transcript has been approved by the Judge