



Neutral Citation Number: [2024] EWHC 140 (KB)

Case No: KB-2023-004331

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 January 2024

Before :
Dexter Dias KC
(sitting as a Deputy High Court Judge)

Between :

Buckinghamshire Council

Claimant

- and -

(1) Jimmy Barrett

Defendants

(3) Persons Unknown (any person carrying out and/or encouraging and/or facilitating development on, or with an intent to undertake development on or to occupy, the land to the west of the Crowne Plaza Hotel, London Road, Beaconsfield, Buckinghamshire HP9 2XE (land registry title number BM414494) as shown edged in black on the map attached to the order without lawful planning consent)

Mark O'Brien O'Reilly (instructed by Sharpe Pritchard) for the Claimant
Michael Rhimes (instructed by Aston Bond) for the First Defendant

Hearing dates: 4 December 2023
Decision circulated to parties 19 December 2023

JUDGMENT

Dexter Dias KC :

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court following electronic communication to the parties on 19 December 2023 of the court’s decisions in respect of applications for various forms of injunctive relief.
2. To assist parties and the public follow the court’s line of reasoning, the text is divided into 12 sections, as set out in the table below.

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B123: hearing bundle page number;

CS/DS §45 claimant/defendant skeleton paragraph number.

§I. INTRODUCTION

3. This is the final hearing in a claim for a series of injunctions, both mandatory and prohibitory, that was issued on 25 May 2023.
4. The claimant is Buckinghamshire Council, the relevant Local Planning Authority (“LPA”) for the site in question. The claimant is represented by Mr O’Brien O’Reilly of counsel.
5. The first defendant is Jimmy Barrett. Mr Barrett is represented by Mr Rhimes of counsel. The court is grateful to both counsel for their focused and insightful written and oral submissions.

6. The second defendant was previously Mr Thomas Barrett, a person unrelated to Jimmy Barrett, a director of the former owner of the site in question (“the Land”). He will be known by his full name and “Mr Barrett” reserved for the first defendant Jimmy Barrett.
7. The claimant seeks prohibitory orders under s.187B of the Town and Country Planning Act 1990 (“the Act”) to restrain breaches of planning control and a mandatory order to undo past breaches following what it claims is a series of unauthorised developments. The site at the centre of the claim lies to the west of the Crowne Plaza Hotel, London Road, Beaconsfield and near to the busy Oxford Road. The Land is located close to a gypsy and traveller site, Wapseys Wood, which has been unlawfully extended. The Land lies within the Green Belt and near to an area of ancient woodland.
8. I should also add that in addition to seeking mandatory and prohibitory orders against Mr Barrett, the claimant seeks a prohibitory order against “Persons Unknown” or “newcomers”.
9. Therefore, the applications before the court are as follows:
 1. Mandatory order against Jimmy Barrett;
 2. Prohibitory order against Jimmy Barrett;
 3. Prohibitory order against Persons Unknown.
10. The final injunctions sought against Jimmy Barrett are opposed by him. On his behalf, and as amicus to the court, Mr Rhimes further submits that the legal basis for the exceptional remedy of an injunction against Persons Unknown, as set down by the Supreme Court very recently in the *Wolverhampton* case, is not established (*Wolverhampton BC v London Gypsies and Travellers* [2023] UKSC 47). As Mr Rhimes points out, the Supreme Court’s judgment was handed down the day before the skeleton arguments were due to be filed and served. The court is particularly grateful to both counsel for making such informed submissions on this important authority at short notice.

§II. BACKGROUND FACTS

11. Ms Stephanie Penney is Planning Enforcement Team Leader in the Enforcement Department at Buckinghamshire Council, and is based in High Wycombe. She is very experienced and has been employed in the planning department for seven years, and has worked in the planning enforcement field for over 20 years, previously with other authorities.
12. On 17 March 2023, at 9.59am, Ms Penney received an email informing her that a complaint had been received that there was a digger on the Land and that hardcore was being laid there. She attended the site with a colleague Mr Johal, a Senior Enforcement Officer, and took photographs that have been exhibited.

13. Upon arriving at an access to the Land, they were approached by a male who said that he was clearing and cleaning the Land. A digger was visibly clearing the area. Whilst at the Land, a lorry with a yellow skip laden with bricks/hardcore stopped on the main road. It was followed by an A1 Grab Hire lorry also laden with hardcore. It appeared that both vehicles intended to enter the Land, but the vehicles drove off. Upon entering the Land, Ms Penney could see that hardstanding had been laid, a track (approximately 4 meters wide) had been formed along the southern boundary and a bund (in excess of 1.5 meters in height) formed on the northern boundary. Hardcore was also visible on the ground. The digger on site had its engine running. The same man who had approached Ms Penney and Mr Johal had been operating the vehicle. He was asked who had instructed him, and replied that it was all “word of mouth”. He said that he did not know who owned the Land. Upon being advised to turn off the digger and leave the Land, he told Ms Penney and Mr Johal that the digger was leaving the Land that day.
14. Following that visit to the Land, the claimant decided to serve a Temporary Stop Notice (“TSN”). This was because there had been an actual breach of planning control at the Land: operational development without planning permission, and because the claimant was concerned that “Having regard to the extent of the works undertaken, it is clear that there is capacity for further harmful unauthorised development on the Land.” As the Land is within the Green Belt, where development is strictly controlled, the claimant considered that a TSN was expedient. The TSN was served on the afternoon of 17 March 2023. Whilst serving the TSN on the Land, Ms Penney could see that the works had ceased.
15. It is important to observe that the TSN was complied with and was not breached. This was confirmed by visits to the Land on 20, 21 and 23 March 2023. The TSN expired on 14 April 2023.
16. Ms Penney spoke with Mr Thomas Barrett (to repeat: unrelated to Jimmy Barrett) on 24 March 2023, a director of the then registered owner, who said that he had not been to the Land for over two months and that he was unaware of the recent developments on the Land. He told Ms Penney that he had blocked two of the three access points to the Land with concrete blocks but that these blocks had subsequently been removed. He had also served a Horse Removal Abatement Notice on the Land. Mr Thomas Barrett told Ms Penney that he had spoken by telephone with Jimmy Barrett who had asked for the blocks to be removed as he required access to the Land in connection with horses. During that phone conversation, Mr Thomas Barrett could hear someone in the background who was abusive and threatening. The First Defendant had unsuccessfully tried to purchase the Land at the same time as Mr Thomas Barrett. Jimmy Barrett was known to the claimant as someone associated with the nearby Waspeys Wood site. A further visit to the Land took place on 27 March 2023, where it was clear that two horse carriages and additional items had been brought onto the Land since the claimant’s last visit.
17. The Council, at that point, decided against seeking injunctive relief from this court. No further developments took place at the Land during April 2023 and Mr Thomas Barrett told the claimant that he had installed more concrete blocks

at two access points to prevent unauthorised access and that he had again displayed notices at the Land relating to the abandoned horses on the Land.

18. On 22 May 2023, Thomas Barrett telephoned Ms Penney at approximately 11.15am to tell her that the concrete blocks had been removed and that a static caravan had now been placed on the Land and was being occupied. There were also three horses on the Land and makeshift stables had been placed on the site. The concrete blocks had been placed to the rear of the hardstanding on the Land. Thomas Barrett told Ms Penney that he intended to attempt to secure the Land again. He had also secured the gates with chains and locks. Possession proceedings were instigated against Jimmy Barrett and a hearing was listed for Slough County Court on 1 June 2023.
19. Adam Pegley, the claimant's Senior Planning Enforcement Officer, visited the Land on 22 May 2023. Photos from that visit are available at Exhibit SP12. Those photos show "the static caravan in situ and the makeshift stables. It is also evident that additional hardstanding has been laid underneath the static" and that services, such as electricity, "have been connected and cables can be seen going into the caravan".
20. The claimant made an urgent application, without notice, for an interim injunction on 24 May 2023. That application was heard by Mr Justice Saini on 25 May 2023. The judge granted an interim injunction. The claimant considered that there had been a material change of use (from agricultural use to residential use) and operational development on the Land without planning permission. This was in breach of section 55(1) of the Act. The Claimant received communication on 1 June 2023 from a solicitor acting on behalf of Thomas Barrett informing the claimant that the possession hearing against Jimmy Barrett "had been adjourned" and that Jimmy Barrett was alleging that he had an adverse possession claim over the Land.
21. The claimant received correspondence from a Planning Agent acting for Jimmy Barrett on 5 June 2023. This was Joseph Jones. Mr Jones stated, inter alia, that "The static caravan could be removed, or left, there is no intention for there to be residential occupation of the static caravan" and that "there is already a static caravan on the land, and the idea was to replace the damaged caravan (which was used for keeping feed, other horse related stuff, and as a shelter in bad weather) with another caravan". Mr Jones informed the claimant that "We are looking to submit an application for stables, in the area where the disputed hardstanding lies, which also requires an element of hardstanding" and that "Persons unknown, have been damaging the fencing with the highway and the fencing with the landfill site".
22. The return date hearing took place on 9 June 2023 at which Mr Anthony Metzger (sitting as a Deputy Judge of the High Court) continued the order of Saini J. A Response to the Claim was provided by Mr Jones on 23 June 2023.
23. Jimmy Barrett submitted a planning application on 30 June 2023 seeking permission to, inter alia, "erect a stable, lay or retain hardstanding for parking and turning, exchange the existing static caravan, retain bunding along the hedge row with Oxford Road, lay additional bunding along the boundary with

Oxford Road, install water and electricity on site, and improve the highway access. Also we would like confirmation that temporary stables (if required) on wheels or skids, will not be regarded as a breach of planning control”. The Application Ref was PL/23/2140/FA.

24. The application was validated on 17 July 2023. Planning permission was granted by the claimant for the “Erection of a stable, lay or retain hardstanding for parking and turning, retain bunding along the hedge row with Oxford Road, install water, electricity and slurry tank on site, and improve the highway access” on 19 October 2023 (“the Planning Permission”). A number of conditions were imposed on the Planning Permission.
25. Condition 1 states:

“The existing equestrian use shall cease within 60 days of the date of failure to meet the requirement below: i) Within six months of the date of this decision, all existing unlawful structures within the red line area of the application site, which include a mobile home and 2 x makeshift stables, which do not form part of the development hereby approved, shall be removed from the site in their entirety. Reason: To protect and preserve the openness of the Green Belt and its purposes”.
26. This condition had been agreed by Mr Jones on behalf of Jimmy Barrett during the determination of the application. The Officer’s Report observed, inter alia, that “It is noted that the site is already being used for the stabling of horses, with two unlawful makeshift stable structures being present on the site, as well as a mobile home”.
27. A hearing of the substantive claim was listed before Mr David Pittaway KC (sitting as a Deputy Judge of the High Court) on 27 July 2023, but was adjourned to this hearing, in doing so continuing the order of Mr Metzger KC.

§III. EVIDENCE

28. The court received an electronic bundle extending to 523 pages; a bundle of authorities running to 328 pages and which included 40 items; skeleton arguments from counsel; oral evidence from Ms Penney on behalf of the claimant and the first defendant Jimmy Barrett. I should add that Ms Penney provided four witness statements, dated 24 May, 7 June, 6 July and 27 November 2023. Jimmy Barrett provided a witness statement dated 17 November 2023. It should be noted that Mr Barrett is not functionally literate. Following oral testimony, the court received oral submissions from counsel.

§IV. LAW

29. The applicable legal principles in a case of this nature are settled and uncontroversial in their main outline.

30. Section 37(1) of the Senior Courts Act 1981 provides that:
- “The High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the court to be just and convenient to do so”.
31. Section 187B of the Act provides that:
- “(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.”
32. The leading authority on s.187B is the decision of the House of Lords in *South Buckinghamshire DC v Porter (No 2)* [2003] 2 AC 558 (“*South Buckinghamshire*” or “*Porter*”). I was referred for different reasons by both parties to the decision in this court by Holgate J in *Ipswich Borough Council v Fairview Hotels (Ipswich) Ltd* [2022] EWHC 2868 (KB) (“*Ipswich*”). In *Ipswich* at [93], the court set down a series of principles derived from *South Buckinghamshire* about the grant of permanent injunctions:
- “(i) The need to enforce planning control in the general interest is a relevant consideration ... [that] the degree of flagrancy of the breach of the planning may be critical;
- (ii) ...there may be urgency in a situation sufficient to justify the avoidance of an anticipated breach of planning control;
- (iii) An anticipatory interim injunction may sometimes be preferable to a delayed permanent injunction ...
- (iv) [and that] ... the court should come to a broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end;
- (v) The achievement of the legitimate aim of preserving the environment does not always outweigh the countervailing rights (or factors). Injunctive relief is unlikely to be granted unless it is a ‘commensurate’ remedy in the circumstances of the case;
- (vi) It is the court’s task to strike the balance between competing interests, weighing one against the other.”
33. In *London Borough of Barking & Dagenham v Persons Unknown & Ors* [2022] EWCA Civ 13 (“*Barking & Dagenham*”), the Court of Appeal reviewed the case law on the availability of injunctions against persons unknown. At [117]

the court said that where the application is for an injunction under s.187B of the Act:

“the applicant must describe any persons unknown in the claim form by reference to photographs, things belonging to them or any other evidence, and that description must be sufficiently clear to enable persons unknown to be served with the proceedings, whilst acknowledging that the court retains the power in appropriate cases to dispense with service or to permit service by an alternative method or at an alternative place. These safeguards and those referred to with approval earlier in this judgment are as much applicable to an injunction sought in an unauthorised encampment cases under section 187B as they are to one sought in such a case to restrain apprehended trespass or nuisance”.

34. The Supreme Court dismissed an appeal against that judgment on 29 November 2023 (*Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47). The Supreme Court held at [170]:

“In so far as the local authorities are seeking to prevent breaches of public law, including planning law...they are empowered to seek injunctions by statutory provisions...They can accordingly invoke the equitable jurisdiction of the court, which extends, as we have explained, to the granting of newcomer injunctions. The possibility of an alternative non-judicial remedy does not deprive the courts of jurisdiction”.

35. And further at [218]:

“that any local authority applying for an injunction against persons unknown, including newcomers, in Gypsy and Traveller cases must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought...There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further, the threat must be real and imminent”.

36. Finally at [238], the court said that when considering whether to grant an injunction against Persons Unknown “in the context of...breach of planning control by Travellers” will likely require the applicant to “demonstrate a compelling need for the...enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant”.

§V. ISSUES

37. The six prime issues for the court to decide were identified as follows:

1. Are there breaches of planning control?
2. If so, are they flagrant?
3. Is Jimmy Barrett responsible for any breaches of planning control?

4. Should a mandatory order be granted against Jimmy Barrett?
5. Should a prohibitory order be granted against Jimmy Barrett?
6. Should a prohibitory order be granted against Persons Unknown?

§VI.

Issue 1: Breaches of planning control

38. It is not disputed between the parties that all the operational development on the Land, including the bund, hardstanding and makeshift stables constitute breaches of planning control.
39. The parties also agree that the caravan being placed on the site, as opposed to the laying of its hardstanding, does not amount to a breach of planning control. It would require the caravan being put to residential use for a breach of control to occur. There is no satisfactory evidence of that. The electric cable seen in some photographs coming out of the window is useless without an electric generator. There is no reliable evidence of such equipment.

§VII.

Issue 2: Flagrancy

40. Mr Rhimes queries how the makeshift stables could amount to flagrant breach when the officer who wrote the report for Planning Permission found that there is limited visual impact due to screening, the development being located in a relatively confined area with tall tree and hedgerows. However, there is no single and invariable test that yields the answer whether an injunction should be granted. I judge that the proper context is to examine the course of conduct in breach of planning control as a whole. As said in *Porter*, the court must come to a view of the overall planning harm. Seriousness must take into account the nature of the breach and what lies behind it, their true context.
41. The March items were installed in breach of planning control. There was then a TSN. During the currency of the TSN there was no further breach. However, once the operational period was over, there was further breach by way of the hardstanding for the caravan. This has the imprint of a carefully timed and strategic breach. It was, I judge, flagrant.

§VIII.

Issue 3: Responsibility for breaches of planning control

42. A vital issue between parties is whether Mr Barrett is in any knowing or deliberate way responsible for any breaches of planning control. The witness statement evidence focused on this question as did the oral testimony in court and the submissions of counsel. It was a decisive question. The positions of the parties remain irreconcilable. The claimant submits that although there is no ‘direct’ evidence of his active involvement in breaches of planning control, there is a compelling inferential case against him fixing him with responsibility. The claimant’s case is that it is clear on the evidence that Jimmy Barrett knew about the installations on the site and associated developments and wanted them to take place as they benefitted him.
43. Jimmy Barrett resists this argument by pointing out that there is a dearth of direct evidence that he was responsible. When cross-examined, Ms Penney on behalf of the claimant accepted that there was no direct evidence that he was involved. In this dispute, there are factors pointing in both directions. It is the task of the court to evaluate them and conclude, to the extent that it is possible on the available evidence, where the truth lies.
44. The factors against responsibility include:
- No direct evidence that Jimmy Barrett responsible;
 - Ms Penney accepted in cross-examination that there was no evidence that he was responsible;
 - Mr Barrett provided a statement with a statement of truth and oral evidence on oath that the breaches of control had nothing to do with him.
45. The factors in favour of responsibility include:
- Each of the breaches of control – the makeshift stables, the bund, the initial hardstanding, the further hardstanding for the caravan – were of benefit to Jimmy Barrett and of use to him;
 - Although not a breach of planning control itself, the caravan placed on site went with the additional hardstanding and was of benefit to Jimmy Barrett and his horses;
 - Mr Barrett’s planning agent Joseph Jones did not state in his statements to the claimant on behalf of Jimmy Barrett that his client was not responsible for the breaches of control;
 - Comments made during Ms Penney’s site visit raise an inference of Jimmy Barrett’s involvement.
46. For the purposes of this issue, I take “responsible” to mean the person who caused something to happen (Oxford English Dictionary definition). It is not necessary to be the sole cause, but must be sufficiently causally connected such that the acts or events can be meaningfully attributed to that person in a way that is beyond the negligible, marginal or trivial.

47. The starting-point must be, and as Ms Penney fairly conceded in cross-examination, that there is no direct evidence that Jimmy Barrett is responsible for any of the breaches of control. That is a powerful point in his favour. Ms Penney stated that notwithstanding the lack of direct evidence, the claimant was concerned, as Ms Penney put it, about “the ambiguity of the evidence” pointing towards Mr Barrett’s responsibility for the breaches. However, it is not for Ms Penney to pronounce definitively on the overall effect of the evidence. That is a matter for the court. The court’s function is to stand back and view the totality of the evidence and make any inferences that flow rationally and reasonably from all the evidence. In assessing the evidence, it is also in Mr Barrett’s favour that in both his filed statement and his sworn oral testimony, he stated that he had no involvement in or prior knowledge of the breaches.
48. When Mr Barrett was asked whether he had asked anyone about who was responsible for the installation in May of the caravan and additional hardstanding under it, he said that he asked no one. This is a puzzling answer. This is in keeping with his response about the March breaches. About those he said that he had heard rumours so he did not feel it necessary to ask who was responsible. None of this stands up to scrutiny.
49. He wished to purchase the Land. He had used it for his horses since about 2005. He had used it so much that he made an adverse possession claim to the Land, with a hearing at the Slough County Court on 1 June 2023 that had to be adjourned for that reason. This demonstrates the strength of Mr Barrett’s interest in the Land. He says that he agreed a sale with the owner of the land Thomas Barrett on 5 April, and purchased it on 19 June, with the title absolute being registered to him on 11 July. Thus, it is very surprising that he did not make any enquiries at all about who was so significantly interfering with the property he was on the verge of buying. When this point was put to him, he said that he was busy with other things such travelling and attending his sons’ boxing careers. That is an unconvincing explanation. He was very determined to purchase the site at some significant cost to him, £292,500. There was very significant development of it in breach of planning control. It is obvious that if he knew nothing about who was responsible for these breaches, he would have tried to find out using his contacts in the local community. A further hardstanding is laid with a static caravan on top of it and he asks nothing of anyone. This points towards his not having to ask as he already knew who was responsible.
50. On its own I would not have found such curious omission as determinative. However, there are other matters to consider. Joseph Jones is Jimmy Barrett’s planning agent. He is also Mr Barrett’s good friend and someone he has known for 20 years. Mr Jones represented Jimmy Barrett throughout these proceedings and in the exchanges with the Council. Joseph Jones refers to Jimmy Barrett as “my client” (B204). The significance of the closeness of the relationship between Mr Jones and Mr Barrett will shortly become apparent.
51. It is introduced by noting that the nature of the breaches of control is also highly relevant. Jimmy Barrett, I am perfectly able to accept, wishes to use the land as he historically has for his horses; they are his great interest, and as he said poignantly in oral evidence, are an integral part of his culture and identity. All

the breaches complained of by the claimant authority are beneficial and useful to Mr Barrett for the tending and maintenance of his horses, as he accepted in evidence. The makeshift stables could be used for the animals. The bund was of use to protect the horses from escaping the site and straying onto the busy Oxford Road. Mr Barrett spoke graphically of how in the past horses had been killed by leaving the land and entering the carriageway. Therefore, the bund was a great benefit to protect his horses. While it is true, as is pointed out by Mr Rhimes, that the bund could protect other horses, they certainly did protect Mr Barrett's, and he had used this site for his horses for two decades. The second area of hardstanding laid in May was of use for the installation of the caravan. The caravan could be used, as was suggested by Mr Jones in correspondence, for the storage of hay and feed. In evidence, Mr Barrett added that the caravan could also be used to store tackle for the horses. Thus, all the unauthorised developments, and the caravan, had direct utility for Jimmy Barrett.

52. On 5 June, Joseph Jones wrote an email on behalf of "Jimmy" and Mr Jones also wrote a statement dated 23 June. When the conditions for the planning permission were being agreed with Richard Regan, the Principal Planning Officer, it was Mr Jones who agreed the conditions on behalf of Jimmy Barrett (B496). In evidence, Mr Barrett stated that Joseph Jones would read out the statements prepared on his behalf over the telephone and he would reply, "That sounds right, Joseph." Plainly, Mr Jones was not acting in his own personal interests, but on behalf of his "client" Jimmy Barrett. The email of 5 June 2023 written by Mr Jones on behalf of his client to the claimant's solicitor must now be considered (B190-91). Mr Jones wrote in his email:

"The static caravan could be removed, or left, there is no intention for there to be residential occupation of the static caravan. There is already a static caravan on the land, and the idea was to replace the damaged caravan (which was used for keeping feed, other horse related stuff, and as a shelter in bad weather) with another caravan. As that static caravan was not residential it did not require planning consent."

53. This was an email written a little over two weeks after the installation of the caravan. It is revealing that Mr Jones writes that "the idea was to replace the damaged caravan". This indicates the clear purpose of the installation. It suggests that this was plainly something of benefit to Jimmy Barrett and that he intended to better tend to his horses since the previous static was in a state of great disrepair. As Mr Jones put it in his statement:

"Images of the existing a caravan can be seen on Google Earth from 2011 onwards, and Mr Barrett used to store feed in that caravan until it fell into severe disrepair."

54. This shows why the new caravan was so necessary for Jimmy Barrett. The previous arrangement would no longer do. The replacement caravan would fill the void. In the 5 June email, Mr Jones wrote to William Rose, the claimant's solicitor (B190) that "persons unknown" had been damaging the fencing. But he does not say that persons unknown had installed the caravan or laid the hardstanding. While I accept Mr Rhimes's point that Mr Jones has no planning

qualifications and his documents were not statements of case, here was the natural and obvious opportunity to lay out Jimmy Barrett's position about what the truth was. It does not take a lawyer or a planning expert to do that. This is about the facts. If Mr Barrett's case at the time was that he was not responsible for any of the breaches of control, here was the time to set that out. Instead, having spelled out how the caravan would be of assistance to his client in tending to his horses, Mr Jones states:

“We would like to agree an undertaking to calm the situation down, and save on the costs for all concerned.”

55. On 22 June 2023 around midday, there was a site meeting between Ms Penney and her colleague Mr Johal for the authority on one side, and Mr Jones and Jimmy Barrett on the other. Ms Penney's statement written on 6 July about the meeting (B217) stated:

“19. The cable was no longer going into the caravan. (shown in photo 3 of SP34). Joseph Jones advised there was no purpose for the cabling and it arrived on site with the cabling going through the window. **The purpose of the static** was to replace an existing static. Mr Joseph Jones advised that the static is not being used for any purpose.

20. I was then shown the previous static (shown in photo 5 of SP34). However, this static was dismantled, abandoned, not fit for purpose and bared no resemblance to a static. The old static was used for storing feed and hay. I was told that this ceased to be used, for storage purposes, just as COVID started. It was at this point the makeshift stables were used.”

(emphasis provided)

56. Thus the (approximately) contemporaneous statement of Ms Penney echoes the written account of Mr Jones. This is why Ms Penney concluded that although there was no direct admission that Jimmy Barrett was responsible for the installation, the “implication” of the conversation was that he was. Certainly at no point was it denied. If Ms Penney is being told that “the purpose was to replace an existing static”, the implication is clear: this previous static that had been used by Mr Barrett was no longer being used due its disrepair and the new one could replace it. Here was historic use linked with intention producing a result to the advantage of Mr Barrett.
57. When one looks at the scale of the bund in the photographs exhibited by Ms Penney, it is striking how significant an act of development this was (B75-77).



The bund development lies to the left, bordering the main road.

(Photographs reproduced with permission.)

58. Earth and soil had been packed into a sloping rampart along a significant length of the site bordering the Oxford Road. This is an act of very substantial development. When Ms Penney visited the site on 17 March, there was an industrial digger or earth mover on site. There were other vehicles arriving. Here undoubtedly was a highly planned and coordinated project. It was of direct and clear benefit to Jimmy Barrett and his horses. Given his extensive use of the Land, his wish to pursue a legal claim for adverse possession of it, his

intention to purchase it and his ultimate success in buying it from Thomas Barrett, there is a strong and reasonable inference pointing to his responsibility in the sense I have defined for this significant activity. The suggestion that some other unknown and unconnected person was responsible and did all this for a reason that no one has sensibly explained lacks credibility. It does not mean that Mr Barrett was the only person involved or responsible. It does not pinpoint precisely what his involvement was in the arrangements. But the court has no doubt – and is certainly satisfied to the civil standard - that he was the prime beneficiary of this substantial work as the person with the expressed and evidenced profound interest in acquiring and using the site. Indeed, in the application for retrospective permission, Jimmy Barrett sought permission to retain the stables and hardstanding, a further demonstration of their utility to him. Ultimately, the decision was that the stables would have to be removed and replaced to those more in keeping with Green Belt policy and visual aesthetics, but he wanted to keep them.

59. My conclusion is that the factors pointing towards Jimmy Barrett being responsible (in the sense I have defined above) for the breaches of control significantly outweigh those against. I am quite satisfied that Mr Barrett was responsible for breaches of control. He did not have to be in the United Kingdom to have arranged or been involved in the significant operation in March. It was of great benefit to him and his horses. The clear implication that Ms Penney took from the June site meeting was the correct one: that the point of the caravan's installation was so Jimmy Barrett could use it as a replacement site for storing feed and hay (and tackle) given the decrepitude of the previous static he had been using. The sense Ms Penney took from that meeting is in harmony with the communications made by Mr Jones on his client Jimmy Barrett's behalf. It reflects the truth.
60. It is not for Ms Penney to definitively state what the totality of the evidence reveals. That is the task of the court. Mr Rhimes submits that the "farthest anyone goes is that his responsibility is implied". However, implication can be powerful. The lack of direct evidence is countered here and overborne by the strong weight of circumstantial evidence that enables the clear and reasonable inference to be drawn that Jimmy Barrett was responsible for these breaches of control that materially, significantly and intentionally benefitted him and his horses on the Land he was intent on purchasing and succeeded in purchasing. I reject the submission made on his behalf that there is no evidence that he is "a truculent owner" who would "flout the law". The court finds that Mr Barrett has been responsible for flagrant breaches of planning control.
61. This finding has significance for the other issues the court must now decide.

SIX.

Issue 4: Mandatory order against Jimmy Barrett

62. I next consider whether there should be a mandatory order against Mr Barrett requiring him to remove the static caravan, the makeshift stables and any

associated paraphernalia. Jimmy Barrett does not object to removing these items. However, he resists being coercively compelled to remove them under threat of breach of injunction and committal proceedings. It is submitted that this is unnecessary, unjust and disproportionate given his willingness to remove these items from the Land that is now his. Further, counsel submits on his behalf that Mr Barrett is incentivised as a condition of the grant of retrospective planning permission is that removal is effected.

63. In considering the rival arguments, I start from the previous finding of the court: Jimmy Barrett was responsible for the breaches of control. He must make them good. The difficulty with the incentivisation argument is that a breach of the condition has a very specific character. The breach would not be the failure to remove the “unlawful structures”. The breach would be any equestrian use after 60 days from the deadline for removal. What has been granted is conditional permission. A breach of the condition notice cannot require removal. The adverse consequence would be the loss of equestrian use after a further 60 days following passing of the six-month deadline. There could also be a financial penalty up to Level 4 of the existing scale, but not removal of the structures.
64. Given that breach of the condition attached to the retrospective permission cannot require removal, I accept the claimant’s submission that other enforcement powers are necessary. Further, I take judicial notice, there being no dispute between parties about this point, that an enforcement notice can take a significant amount of time to bring a breach to an end. Consequently, I judge that something more is required: a mandatory order for removal, backed by the attendant sanctions for breach.
65. As to the question of harm, the justification of the condition was to protect and preserve the openness of the Green Belt. The makeshift stables run contrary to the visual requirements operating in the Green Belt and are inconsistent with its protected character. I judge that an additional factor in favour of grant is the public interest in maintaining the integrity of the planning control system and public confidence in it by enforcing planning control and requiring the remedying of breaches.
66. I must carefully consider any hardship to this defendant. Mr Barrett has expressed his willingness to remove all the structures. He states that he fully intends to achieve precisely what the mandatory order would mandate him to do. By removing the structures, Jimmy Barrett will not lose his accommodation, so an injunction does not adversely affect any right to occupy, and is not an interference with such rights under Article 8 of the European Convention on Human Rights. Further, as he testified, he has use of a dog transporter to store feed and hay for his horses and he was not using the caravan in any event.
67. Mr Rhimes submits that as a preliminary question the court should ask whether “there is a real risk that the first defendant will not do what he has voluntarily agreed to do”. Mr Rhimes asks what is “the risk of non-compliance?” However, I have found that Mr Barrett has a history of non-compliance with planning control. He has been careful and strategic about it. It is clear on the evidence that he has “played the system”, as Lord Bingham phrased it in *Porter* at [29]. After Jimmy Barrett’s initial March breaches of control, he was careful to do

nothing during the TSN's operational period. But once it expired, he again breached control by having further hardstanding laid so he could install the caravan for the feed and other uses in service of his horses. With this track record of non-compliance, I judge it necessary to compel him to remove the structures to protect and preserve the openness of the Green Belt and its purposes. I note again that bringing the caravan onto the site was not per se a breach, but there was an associated breach by the laying of the hardstanding.

68. The order sought is for removal of the offending structures by the deadline for the condition of the retrospective permission. That seems to me to be a proportionate order, allowing ample (if not generous) time for their removal. As was said in *Porter*, where “existing remedies have proved, or are thought likely to be, inadequate”, an injunction serves “above all to permit abuses to be curbed and urgent solutions provided where these are called for” [30].
69. A mandatory order must be, as Holgate J put it in *Great Yarmouth*, “commensurate” with the harm (*Great Yarmouth Borough Council v Al-Abdin* [2022] EWHC 3476 KB). I find that a mandatory order against Mr Barrett would be commensurate. In reaching this conclusion, I take into account principles of equality and note that the council has considered its Public Sector Equality Duty. Judging the matter as at the date of the hearing, I conclude that grant of a mandatory order is just and convenient, and proportionate to the identified harm, especially given the degree and flagrancy of the evidenced breaches for which Mr Barrett is responsible. I am not satisfied that lesser enforcement measures are likely to be effective. As Ms Penney correctly put it, an injunction is “a stronger mechanism than a breach of a condition notice.” Therefore, examining all these factors, it is just for the court's discretion to be exercised in favour of grant.

§X.

Issue 5: Prohibitory order against Jimmy Barrett

70. A Prohibitory order looks forward. The court must judge whether, given its findings about Mr Barrett's responsibility for flagrant breaches of planning control, such future prohibition is justified. I approach this question by recognising that a prohibitory order is a significant interference with the liberty of the individual. It is no answer to say that if someone does not intend to break the law or planning control, then there is nothing to fear. The very existence of the grant of a prohibitory order, let alone the consequences of its breach, is a very serious matter. It is, as Mr Rhimes accurately submits, a “draconian regime”.
71. Against this, the court finds that due to the degree of the breaches that Mr Barrett has been responsible for and their flagrancy, the Land must be protected from further and future unauthorised development by him. It must be noted that retrospective planning permission has been granted for the hardstanding, the bund and the new stables. But future unauthorised development of the site would be extremely harmful to the Green Belt, including to its “openness” and its “purposes”. I am not satisfied that lesser enforcement measures would be

effective in restraining future breaches of planning control by Mr Barrett given his history of involvement in serious and significant breaches, made with significant planning and preparation. The Land must be properly and effectively protected against landscape and environmental harm. The deterrent of a prohibitory order is necessary. In my judgment, nothing less will do. Once more, the court's discretion must be exercised in favour of grant to prevent serious harm and from future flagrant breach. As Lord Bingham said in *Porter*, where there is evidence, as here of the wilful playing of the system, that "will point strongly towards the granting of an injunction" [29].

§XI.

Issue 6: Prohibitory order against Persons Unknown

72. Mr Rhimes presented the defendant's position with some vividness when he submitted that it would be "no skin off Mr Barrett's nose" if the court were to grant an injunction against Persons Unknown. Nevertheless, he sought and was granted permission to make submissions for the assistance of the court.
73. The grant of an injunction against newcomers is an exceptional remedy, as the Supreme Court very recently emphasised in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47. It is designed to bind persons who are not identifiable as parties to the proceedings at the time when the injunction is granted. Such injunctions are "a wholly new" type of injunction and "are in substance always a type of without notice injunction" (*Wolverhampton*, [144], [142]).
74. The Supreme Court confirmed that there must be evidence of compelling need for the enforcement of planning control ([167], [186]). Yet in cross-examination, Ms Penney stated that there is no such evidence. She stated that "we have no evidence of risk to the site, but the reason for proceeding [with the newcomers' application] is the vulnerability of the site". She did not think there was any "imminent threat". There was no evidence of any person "who wished to use the site for residential use". The highpoint of the claimant's case is that there is "a possibility" of future breaches by Persons Unknown as the Land is "an attractive site". This is far from a "strong probability" required by *Wolverhampton*.
75. Ms Penney also accepted that the claimant had not considered lesser measures such as byelaws. The intention by the claimant to make this application has not been advertised as it should have been or sufficiently raised with the local traveller and gypsy community. The claimant had not spoken to the gypsy liaison officer who acts as go-between between the Council and local gypsy and traveller community.
76. Ms Penney accepted that there was a risk that due to that failure the court may not have before it people who might have wanted to live at the site and so would have something to say about the grant of the injunction. This is in the context of Ms Penney further agreeing that there had been serious failure by the local

authority in the provision of sites for gypsies. Mr Rhimes also submitted that the lack of time limit on the injunction offends against the thrust of the Supreme Court judgment, where “considerable doubt” was expressed that such an injunction could ever be granted for “significantly more than a year” [225].

77. In response, Mr O’Brien O’Reilly drew the court’s attention to the planning policy. He submitted that unmet need is not a carte blanche. Such need is unlikely to amount to “very special circumstances” that would defeat the high policy objective of protecting the Green Belt.
78. While I accept counsel’s submission that it is possible to give effective notice by alternative service provisions, I return to the conditions set down by the Supreme Court for grant in these cases. I am not satisfied there is “full and detailed evidence” of “compelling need”. The claimant has not demonstrated that there is a “strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm”. I have been provided with no evidence that the threat is “real and imminent” [218].
79. In its skeleton argument, the claimant relies on the assertions by Mr Barrett that “travellers” may have “decided to take advantage of the site” while he was away. The finding of the court is that the Mr Barrett was part and parcel of the breaches of planning control. These were actioned for his prime benefit. While it is not possible to identify the people who were involved in those breaches with him by laying the hardstanding, for example, I do not consider this to be a cohort of strangers unknown or unconnected to Jimmy Barrett. It is submitted that because Mr Barrett does not spend a great deal of time at the Land, there is a “possibility” that people could place their caravans there. However, he is now the owner of the Land. Following his acquisition, there have been no further breaches. This is entirely unsurprising. This fact casts the level of need for future protection of the Land into a clearer light. The compelling future need (or risk) does not flow from exploitation of the site by Persons Unknown, but the breaches have been closely tied to Mr Barrett’s interests.
80. When the claimant speaks in mere “possibilities” and not higher degrees of likelihood, the court cannot grant an injunction against Persons Unknown. The risk is too indistinct, uncertain and conjectural. The claimant has not considered lesser measures such as byelaws. There has been far from sufficient local consultation with interested communities and thus the rudimentary steps to promote “procedural fairness”, as the Supreme Court called them [226], were not taken. These types of injunctions are particularly sensitive and the needs and interests of gypsy and traveller communities, who often experience hardship, scorn and prejudice, must be properly protected. Overall, given the evidential defects in the claimant’s case and the indeterminate length of prohibition sought, the court concludes that it is not just and convenient to grant this further injunction. The fact that the claimant changed the nature of its application during the course of the hearing and submitted that after all a time limit could be “just imposed” by the court, is another indicator that the making of this application was not properly founded.

§XII. DISPOSAL

81. As a result of the above, the decisions of the court in the applications are as follows:
 1. Mandatory order against Jimmy Barrett: **granted**.
 2. Prohibitory order against Jimmy Barrett: **granted**.
 3. Prohibitory order against Persons Unknown: **dismissed**.
82. The consequence is that I make both the mandatory and prohibitory orders sought by the claimant against the first defendant Mr Barrett. However, I remain unpersuaded that the court should grant an injunction against Persons Unknown in this case. That application is dismissed.
83. The court will next hear argument about costs and any further consequential and case management matters.