

Neutral Citation Number: [2024] EWHC 1653 (KB)

Case No: QB-2017-005202

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 7 June 2024

BEFORE:

MR JUSTICE BUTCHER

BETWEEN:

ROCHDALE METROPOLITAN BOROUGH COUNCIL

Claimant

- and -

**SHANE HERON
& ORS**

Defendants

CAROLINE BOLTON and **NATALIE PRATT** appeared on behalf of the Claimant
The Defendants did not appear and were not represented

JUDGMENT

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1. MR JUSTICE BUTCHER: On 21 May 2024, I heard the relisted final hearing of this claim for injunctive relief against various named Defendants and two defined categories of Persons Unknown. The injunction which was being sought is what has been called a ‘traveller injunction’ in that it prohibits the formation of unauthorised encampments and the depositing of controlled waste.
2. Interim relief was granted by Garnham J on 19 February 2018. The present claim was then caught up in what has been called the Barking and Dagenham litigation after *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* which led to the reported decision of [2022] EWCA Civ 13 and which culminated in the appeal to the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47 or, as I will refer to it, "*Wolverhampton*". As such, these proceedings have a complex procedural history which it is unnecessary to consider in detail. It is, however, germane to record that this final hearing was previously listed to be heard on 22 November 2022, but was adjourned in the light of developments in the *Wolverhampton* appeal on the morning of trial.
3. The appellants in *Wolverhampton* have been notified of this final hearing. None indicated an intention or desire to take part or make submissions and none appeared or was represented at the hearing. No named Defendant formally acknowledged service or defended the claim.
4. I should deal at the outset with two outstanding applications, both of which are dated 7 November 2022 and which were outstanding at the time of the hearing before me. By the first of those applications the Claimant applied for permission to rely on the sixth witness statement of Adriam Graham. I have read that witness statement and formally grant permission. Secondly, the Claimant made a further application to deal with a number of outstanding procedural matters in this claim being, first, discontinuing against a further 20 Defendants whom it had not been possible to serve with Scott Schedules. Permission was required pursuant to CPR 38.2(2)(a)(i). And, secondly, amending the spelling of the name of Defendant 20. I grant those applications.

The Parties

5. The Claimant is the local authority for the administrative area of Rochdale. The Borough of Rochdale is located within Greater Manchester. The mid-year estimates in 2015 estimated the borough's population at 214,195 people. The Claimant brings this claim in its capacity as a local authority and in the discharge of its administrative duties and functions for the benefit of all the inhabitants of the borough. Specifically, the claim is brought pursuant to the Local Government Act 1972, section 222 and the Town and Country Planning Act 1990, section 187B. In relation to the latter, the Claimant is the local planning authority for the borough and accordingly has the additional administrative function of enforcing planning control within the borough.

The Named Defendants

6. The claim as originally issued was against 89 named Defendants and Persons Unknown. The claim has since been discontinued against several of those named Defendants and two further named Defendants added, such that the claim remains live against, as I believe, 51 named Defendants. The injunction is sought against the named Defendants on a borough-wide basis. There are Scott Schedules which set out the case against the remaining named Defendants. Where the name of a person alleged to have committed the wrongs complained of is known, that person has been named as a Defendant in the proceedings on the basis that they are not a person unknown.

Persons Unknown

7. The 90th Defendant to the claim is "Persons unknown being members of the travelling community who have unlawfully encamped within the borough". The Claimant also obtained the court's permission to add the 93rd Defendant, "Persons unknown forming unauthorised encampments in the Metropolitan Borough of Rochdale". The injunction is not sought against those Persons Unknown on a borough-wide basis; rather the Persons Unknown injunction is sought only in relation to a specific list of sites within the borough. At the hearing before me it was clarified that the Claimant seeks this protection in relation to 334 sites, comprised of the 325 sites protected by the interim injunction order and 9 additional sites added to the claim by way of the amended Claim Form dated 1 September 2021.

8. From the second witness statement of Peter Maynard, which I have read, it appears that the Borough of Rochdale has a total area of 158 square kilometres. The total area of land that is sought to be protected by the Persons Unknown order, is 15.3 square kilometres, which equates to 9.7 per cent of the land of the borough.
9. As is explained in the sixth witness statement of Adrian Graham, the sites which have been chosen for protection against persons unknown are those which have been or are likely to be targeted by unauthorised encampments. The latter are sites of the same nature as those which have been targeted in the past, especially where unauthorised encampments would be particularly harmful to the land and the inhabitants of the borough. The Claimant accepts that it has not and cannot assess the welfare needs of all persons unknown who may enter the borough and form an unauthorised encampment, such that it would be inappropriate to seek a precautionary borough-wide injunction against those persons. The order sought, and which has been granted on an interim basis, does not prohibit lawful encampments.
10. The Claimant's position is that injunctive relief against persons unknown is required as: (1) it has not been possible to identify all those who have unlawfully encamped on the sites in the borough for which protection is sought; (2) that it is more likely than not that, following the grant of final relief, persons who have not yet unlawfully encamped in the borough will attend the borough and form an unauthorised encampment; and (3) unless the final order in this claim captures any such newcomers, they would not be restrained from forming an unauthorised encampment and the Claimant would be put to the expense of seeking further injunctive relief, which expense would have to be met from public funds.

Factual background

11. It is necessary to say something in more detail as to the factual background of the present claim. This is derived from the witness statements before me and from the oral evidence of Mr Anthony Johns, the Environmental Quality Manager at the Claimant, which I gave the Claimant permission to call. What emerges from this evidence is that, between 2 January 2015 and 27 September 2017, which was shortly before the present claim was issued, the borough experienced 133 unauthorised encampments. The

number of instances of unauthorised encampments in the borough had been increasing in the three years immediately preceding the issue of this claim: 28 in 2015, 40 in 2016 and 65 in 2017. Those encampments were formed on both public and private land. The evidence shows that the sites targeted by Defendants when forming unauthorised encampments included recreational spaces, school and employment zones. Many of those sites were accessed through forced entry such as by the cutting of locks, ramming of gates, ripping up of security bollards and driving over grassland.

12. There is also evidence as to the cost of clean-up from those encampments. This indicates that the costs incurred by the Claimant often ran into the hundreds and sometimes into the thousands of pounds per encampment. The fifth witness statement of Adrian Graham, which I read, details that the costs incurred by the Claimant in dealing with fly tipping associated with unauthorised encampments was in the sum of £25,419.10 in 2015, £23,199.03 in 2016, and £87,895.63 in 2017. The cost of fly tipping in 2018, that is to say after the grant of the interim injunction, fell to just £944 and has been low thereafter.
13. Unauthorised encampments have not, however, stopped entirely. Mr Johns gave evidence in particular of incidents in September 2023, on 29 February 2024, on 13 March 2024 and in April 2024. In neighbouring boroughs, which do not have the benefit of any injunction, there have been ongoing and frequent unauthorised encampments. By way of example, the evidence was that Bury had had 29 encampments in the period August 2022 to February 2024, and Wigan has had to deal with 17 since April 2023.
14. There is also evidence before the court of the various adverse impacts that the unauthorised encampments have had on the borough. In brief and to summarise, the unauthorised encampments are often linked to forced entry onto the relevant land, fly tipping, often on a commercial scale, the depositing of untreated human excrement and other soiled material which are prejudicial to human health, and antisocial behaviour such as threats and intimidation, fire and health and safety hazards and defecation in public places.

The legal framework

15. The court's power to grant injunctions is derived from the Senior Courts Act 1981, section 37, which provides:

"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."

16. In these proceedings more specifically, the Claimant sought and obtained the interim injunction pursuant to the Local Government Act 1972, section 222, and the Town and Country Planning Act 1990 ("TCPA") section 187B and it is on those provisions that the Claimant relies for the purposes of this hearing. I will take those two regimes in the reverse order.

17. As to TCPA, section 187B provides:

"(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."

18. Accordingly, the court may grant an injunction where a local planning authority considers it necessary or expedient to restrain an actual or apprehended breach of planning control. The underlying cause of action in a claim brought under section 187B is a breach of planning control.

19. TCPA, 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."

TCPA section 55(3) 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."

20. Pursuant to TCPA section 57(1), planning permission is required for the carrying out of any development of land. Planning permission may be obtained by way of express grant or by way of 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.
21. The breaches of planning control complained of in this claim are primarily the material change in the use of the relevant land to a temporary traveller site, and by the depositing of refuse or waste materials without the requisite planning permission. The cause of action that underlies a claim brought pursuant to section 187B is not one upon which the court can adjudicate. 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. The court's power to grant an injunction under section 187B TCPA nevertheless remains a discretionary one, albeit that discretion is not unfettered. Underpinning the court's jurisdiction to grant an injunction is, as I have said, the Senior Courts Act 1981, section 37(1). The discretion must be exercised judicially meaning, in this context, and I quote from *South Buckinghamshire District Council v Porter* [2003] 2 AC 558 at [29] per Lord Bingham of Cornhill that:

"... the power must be exercised with due regard to the purpose for which [it] 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."

22. The second regime is that of the Local Government Act 1972, section 222. That section 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."

23. Section 222 thus does not create a cause of action, rather it confers on local authorities the power to bring proceedings to enforce obedience to public law without the involvement of the Attorney General. Certain guiding principles as to the exercise of the court's discretion to grant an injunction where an action is pursued by a local authority in reliance on section 222 are identified in *City of London Corporation v Bovis Construction Limited* [1992] 3 All ER 697 at 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 District Council v Midland Enterprises (Special Events) Limited* (1986) 86 LGR 83 at 89."

24. Where 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. That section provides, by way of subsection (2):

"If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction."

25. Subsection (3) provides:

"This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either—

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection."

Persons Unknown: *Wolverhampton*

26. The Supreme Court in *Wolverhampton* decided many issues relating to traveller injunctions against newcomer persons unknown. The Supreme Court held that injunctive relief can be granted against newcomer persons unknown. At paragraph 167, the court said this:

"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 ...; and the most generous provision for liberty (ie 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."

27. The practical implications of the principles affecting an application for a newcomer injunction against gypsies and travellers and the safeguards that should accompany the making of such an order, were considered in detail at paragraphs 188 to 237 of *Wolverhampton*.

Precautionary relief

28. The injunction which the Claimant seeks is to restrain apprehended breaches of planning control and the various nuisances complained of that flow from those breaches. To that end, the Claimant is seeking **quia timet** relief, or what may be called precautionary relief albeit the relief sought is not purely precautionary given that some

apprehended wrongs and resulting harm have already occurred. To the extent that it is necessary to have regard to the principles applicable in relation to the grant of precautionary relief, I was referred to what was said by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456, which decision has since been approved in *London Borough of Barking and Dagenham v Persons Unknown* [2022] EWCA Civ 13 by Sir Geoffrey Vos, MR at 83. The guiding principles are set out in *Vastint* at [26] to [31].

Analysis and conclusions

29. I will deal first with the application for an injunction against persons unknown and then turn to deal with that sought against the named Defendants.

Persons Unknown

30. The guidance at paragraph 167(i) of *Wolverhampton*, which I have quoted, requires there to be a compelling need sufficiently demonstrated by the evidence for the remedies that have been sought which is not adequately met by other measures available to the applicant. At paragraph 188 of *Wolverhampton*, compelling need is described as the "overarching principle that must guide the court at all stages of its consideration"; and at paragraph 218 of *Wolverhampton* it was said:

"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."

31. Further, the guidance at paragraphs 188 to 217 of *Wolverhampton* must be considered when the court is assessing whether there is a compelling justification for the injunctive relief sought. At paragraph 189 of *Wolverhampton*, the Supreme Court said there are three preliminary questions:

"The first is whether the local authority has complied with its obligations ... to consider and provide lawful stopping places for Gypsies and Travellers ... second is whether the authority has exhausted all reasonable alternatives ... including whether it has engaged in a dialogue with the Gypsy and Traveller communities to try to find a way to accommodate their

nomadic way of life by giving them time and assistance to find alternative or transit sites, or more permanent accommodation. The third is whether the authority has taken ... steps to control or even prohibit unauthorised encampments and related activities by using the other measures and powers at its disposal."

32. As to the first, I am entirely satisfied that there is a strong probability that in the absence of an injunction, a tort or breach of planning control or other unlawful conduct will be committed and that this will cause real harm. The basis for this is threefold: first, what has happened in the past; second, what has happened since an interim injunction has been in place; and third, the likelihood as to what will happen if there is no injunction.

33. As to the past, as I have said, between 2 January and 27 September 2017, the borough experienced 133 unauthorised encampments. There is clear evidence as to the harms caused by such encampments of the types which I have already referred to, but which in outline were that:

(1) Sites on which unauthorised encampments were formed were often fly tipped, sometimes on a commercial scale, with waste such as rubble, asbestos, household items, felled trees, propane gas cylinders and general rubbish.

(2) Deposits of untreated human excrement and associated waste, such as soiled toilet paper and nappies occurred on many sites on which unauthorised encampments were formed, which posed a risk to public health.

(3) Unauthorised encampments often targeted business parks and industrial estates, putting in jeopardy the wealth and prosperity of the borough, especially as the formation of unauthorised encampments might discourage businesses from occupying space on the business and retail parks, in turn jeopardising the regeneration of and much-needed job creation in the borough.

(4) Some of those forming encampments were associated with some incidents of threatening and intimidating behaviour. There is a reference in the evidence

to a specific incident in which a petrol can was held above the head of a security guard at business premises whilst threats to burn the security guard were made.

(5) The unauthorised encampments often had a negative impact on open green space and, on occasion, caused damage to land.

(6) Tensions between the travelling and settled communities arose, on occasion, when unauthorised encampments were formed.

34. Each of the encampments was a breach of planning control and in the large majority of cases was also a trespass.
35. As to the second aspect, what has happened since the grant of an interim injunction, the statistics in Mr Graham's fifth witness statement, which I have read, at paragraphs 6 to 9, show that the interim injunction has been effective in reducing the frequency and duration of encampments. Nevertheless, encampments do still form and there have been, as I have said, recent incidents.
36. As to the third aspect, it appears to me to be entirely reasonable to apprehend that, if the injunction is not continued, there will be an increase in the frequency and duration of encampments approaching or perhaps exceeding pre-injunction levels. This is especially so as it is apparent that there are still encampments that frequent the borough. It is clear that historically those who form the encampments have been persistent; and from this fact and from the experience of neighbouring boroughs there is, as I find, a strong probability that such encampments would continue to be formed and harm would continue to be suffered.
37. I therefore turn to the three preliminary questions identified in *Wolverhampton*. First, the obligation to provide lawful stopping places. Ms Bolton for the Claimant was at pains to emphasise that the Claimant has been trying to assist and provide for a nomadic way of life for years. I have further been provided with detailed evidence as to the provision for travellers within the borough, both permanent and transit, in the second witness statement of Peter Maynard and the witness statement of Stuart Morris. What this indicates is that the council operates a negotiated stopping

agreement. Further, there is a toleration policy towards encampments which is described in the second witness statement of Peter Maynard and the first witness statement of Stuart Morris. The evidence is that the requirements for transit pitches was met and exceeded between 2014 and 2019 and, despite some capacity being lost in 2019, alternative arrangements were put in place whilst a further site was identified as has now happened and which site is now being used.

38. The second preliminary question is the exhaustion of all reasonable alternatives. Under this heading I will not deal with the exhaustion of alternative measures and powers, which I will come to as the third preliminary question. What is raised by paragraphs 189 and 203 of *Wolverhampton*, is the consideration that local authorities should seek to engage with gypsy and traveller communities in an attempt to encourage dialogue and cooperation, and better understand the needs of the respective parties. The evidence is that, to that end, the Claimant notified the appellants in the Supreme Court proceedings in *Wolverhampton*, being three organisations that represent the interests of the traveller and gypsy communities, of this final hearing. None of the three organisations indicated that it wished to make representations.
39. Furthermore, Gillian Lucas, the Claimant's Gypsy and Traveller Liaison Officer, gave evidence in her first witness statement that she regularly attends conferences with LeedsGate, a Gypsy and Traveller organisation that works in and across West Yorkshire, and other national Gypsy and Traveller organisations. The evidence is further that the Claimant does not adopt an uncompromising stance to enforcement and will give time for an encampment to vacate land after the encampment has been advised of the interim injunction. The evidence suggests that the Claimant's approach of engagement and toleration generally ensures that an encampment leaves the relevant land within 24 hours, thus limiting the harm and impact of the encampment, and has not yet led to the need to enforce the interim injunction by way of any further legal proceedings, either by the use of the power of arrest or committal proceedings.
40. It is, however, right to say, and the Claimant accepts, that there has not been the level of dialogue with representative groups that appears to have been contemplated by the Supreme Court in *Wolverhampton*. I do not however consider that that militates against the grant of an injunction against persons unknown here, in particular given:

first, the constructive approach to enforcement that, on the evidence, has been adopted by the Claimant; second, the frequent unwillingness of those who form unauthorised encampments to engage with the officers of the Claimant; and third, the absence of a responses from those representative groups which have been made aware of this application.

41. In relation to the third preliminary question, which is as to steps to control or prohibit unauthorised encampments by other measures and powers, I am satisfied that the Claimant has considered and/or used other measures and powers in an attempt to control and prohibit unauthorised encampments and that none has proved nearly as effective as the injunction. It appears from the witness statement of Gillian Lucas and the first witness statements of Adrian Graham, Saiqa Hussain and Stephen Pyke, that the Claimant has sought to utilise the enforcement powers available to it under the Criminal Justice and Public Order Act ("CJPOA") sections 77 to 78, with the police also exercising their powers under the CJPOA section 61.
42. That evidence persuades me that the powers under the CJPOA are, by comparison with an injunction, an ineffective and inefficient way of dealing with unauthorised encampments. In particular, Mr Pyke gives evidence that the way in which these powers were employed when it was considered necessary was that when notice of an unauthorised encampment was received, an officer of the Claimant would attend the site to engage with those forming the encampment and undertake an assessment of any welfare needs. If no welfare needs were identified, two officers of the Claimant would then attend to serve a section 77 notice and explain that the encampment had 24 hours to leave the land. If the encampment failed to vacate as directed, recourse would be had to the court.
43. As Ms Hussain says in her evidence, if section 77 or section 61 powers were used, the encampment would typically simply move to another site within the borough, meaning that the enforcement procedure needed to start afresh in relation to the new site at further expense to the Claimant. Further, the evidence indicates that, when such powers have been sought to be used, an encampment will often vacate land shortly before the court hearing, causing the proceedings to be discontinued whilst having caused expense to the Claimant.

44. I am satisfied on the basis of the material before me that the enforcement powers under the CJPOA sections 77 to 78, are ineffective against the Defendants and not sufficient to curb instances of unauthorised encampment in the borough. This is in particular because many encampments refuse to comply with a section 77 direction to leave the relevant land, putting the Claimant to the expense of seeking an order under section 78. The delay between the giving of a section 77 direction and enforcement of such a direction by obtaining a section 78 order can allow significant harm to the environment and amenity of the area. Those forming unauthorised encampments tend to leave the land as soon as the section 78 hearing takes place, thus avoiding any serious sanction but still putting the Claimant to trouble and expense. Further a section 78 order covers only the land upon which the unauthorised encampment has formed, such that, as I have said, those encamping unlawfully can and often do simply move to an alternative site, perhaps no more than a few hundred metres away, with the result that the enforcement process must begin afresh.
45. That assessment of the effectiveness, or rather ineffectiveness, of section 61 and sections 77 to 78 of the CJPOA is supported by Inspector Hill in his evidence which was put before me. Further, there is evidence from Chief Inspector Inglis which indicates, by reference to events in a neighbouring borough, that it is unsustainable for the police from a resourcing perspective frequently to rely on section 61.
46. I also accept what Ms Bolton submitted to the effect that reliance on another potential alternative measure, the making and enforcement of byelaws, suffers from many of the same difficulties, including in particular as to delay, as apply to the enforcement powers under sections 77 to 78 of the CJPOA.
47. It is also appropriate to say at this juncture that I have been satisfied that the Claimant has sought to identify those Defendants who can be named, including by use of vehicle registration numbers and in the course of welfare checks. I accept, however, that many individuals cannot be identified by name and others may give a false name and there will be newcomers. An injunction solely against named persons is difficult to enforce and may be largely toothless. Accordingly, the possibility of a named person injunction alone does not provide an adequate remedy for the issue facing the Claimant.

Procedural protections

48. Paragraph 167(ii) of *Wolverhampton* requires there to be procedural protections for the rights of newcomers to overcome the strong **prima facie** objection to subjecting them to a without notice injunction. Those protections should include generous liberty to apply provisions and an obligation to take all reasonable steps to bring the application and any order to the attention of those who may be affected by any order made. Those will be incorporated into the order which I will make, which I will come to consider in detail after I have concluded this judgment on principle.

Liberty to apply

49. Specifically, the injunction ought to include a generous liberty to apply, as the interim injunction does. That will be dealt with in the terms of the order.

Notification of the application and any order

50. Provision will also be made for the notification of the order which I will make.

Territorial and temporal limitations

51. Paragraph 167(iv) of *Wolverhampton* requires newcomer injunctions to be constrained by territorial and temporal limitations to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon. That guidance is expanded upon in paragraph 225 of *Wolverhampton* where the Supreme Court highlighted the exceptional nature of the remedy and said:

- (1) “We have considerable doubt as to whether it could ever be justifiable to grant a Gypsy or Traveller injunction which is directed to persons unknown, including newcomers, and extends over the whole of a borough or for significantly more than a year.”
- (2) “[the injunction] must be a proportionate response to the unlawful activity to which it is directed.”

(3) an injunction which extends borough-wide is likely to leave the Gypsy and Traveller communities with little or no room for manoeuvre”

(4) injunctions of this kind must be reviewed periodically ... and ... ought to come to an end ... by effluxion of time in all cases after no more than a year unless an application is made for their renewal. [Such an application should be] supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.”

52. With regard to the guidance as to territorial limits, the interim injunction and the order sought in this claim, are not borough-wide as against persons unknown. As I have already said, the injunction at present applies to only 325 sites and the order which I intend to grant will apply to 334 sites. That I consider to be a reasonable and proportionate approach to the territorial reach of the injunction. It is an approach which seeks to protect only the most sensitive areas in which the greatest harm is likely to be suffered by reason of unauthorised encampments. About 90 per cent of the territory of the borough will not be the subject of this aspect of the injunction.

Temporal limits

53. Having had regard to the *Wolverhampton* guidance as to temporal limits, the Claimant seeks only a one-year order against persons unknown. I intend to make such an order. The Claimant can apply to extend it.

Justice and convenience

54. I have also considered the requirement of section 37 of the Senior Courts Act, repeated in paragraph 167(v) of *Wolverhampton*, that it must be just and convenient to grant the injunction.

55. There are also several other points of guidance set out in paragraphs 188 to 237 of *Wolverhampton* which it is appropriate to consider within this general assessment of whether the relief is just and convenient. Those considerations include that the intended respondents to an application must be defined as precisely as possible,

identified and enjoined where possible and, if the order is sought against newcomers, the possibility of defining the class of persons by reference to conduct and/or intention should be explored and adopted if possible. The injunction should be clear and precise and use everyday terms when setting out the acts that it prohibits. The prohibited acts must correspond as closely as possible to the actual or threatened unlawful conduct and extend no further than the minimum necessary to achieve the purpose for which it is granted. The order is not an interim order in the sense that it is holding the ring until the final determination of the merits at trial, and where an application is made by a public body acting in pursuance a public duty, an undertaking in damages may not be appropriate. That said, there are some instances in which a cross-undertaking may be considered appropriate. The matter should be considered on a case-by-case basis and an applicant must equip the court with the most up to date guidance and assistance.

56. I will consider those points in turn. As to the matters set out in paragraph 221, which is in particular the identification of the intended respondents to the application as precisely as possible, the Claimant has hitherto identified a significant number of persons associated with the formation of unauthorised encampments in the borough, and those persons have been named as named Defendants to the claim. The categories of persons unknown are identified in accordance with the *Wolverhampton* guidance.
57. As to the prohibitions and the matters set out in paragraphs 222 to 224 of *Wolverhampton* which are, in particular, that the injunction should be clear and precise, the prohibitions which I intend to grant are, in my judgment, clear. As far as possible they are drafted in everyday language without reference to legal concepts or specialist language. I suggested and will suggest some further changes in the language to be used to further this desirable end.
58. I consider, however, that the prohibitions which are sought are appropriately narrowly drawn and correspond to the relevant unlawful conduct, that is to say, breach of planning control by reason of a material change of use without the requisite permission, including by the depositing of waste and the causing of nuisance. I consider that the combination of the definition of the class of persons unknown, coupled with the narrow drawing of the prohibitions, will ensure that only conduct that is in any event unlawful is prohibited by the terms of the order.

59. As to the question of an undertaking in damages, I have been persuaded that, given that these are proceedings brought by a local authority exercising a law enforcement function in the public interest, the court should not require an undertaking in damages. There does not appear to me to be any particular reason in the present case for extracting an undertaking in damages. I note that no undertaking in damages has hitherto been required in these proceedings, including when the interim order was made in 2018.
60. Furthermore, I take into account that the Claimant is responsible for the enforcement of planning control in the borough. In the absence of the Claimant taking action, no other person can or would take action to enforce against the breaches of planning control that have occurred and which are threatened; and further that any argument that the Claimant is interfering with the Article 8 right to a home of any member of the gypsy and traveller communities appears a weak one, because such persons do not have a home on land that they do not own. If and to the extent that there is any interference with the right to a family and private life, that right is in any event qualified and must be balanced against the rights of others, and it appears to me that the injunction is unlikely to cause a material loss that may be compensated by an award of damages. In any event, if a successful application for discharge or variation is made following the grant of the injunction, the court has the power to make an award in damages if it considers it appropriate to do so, with which the Claimant must comply. Accordingly, 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.
61. For all these reasons I conclude that the requirements laid down in *Wolverhampton* have been met. I consider that there is a compelling case for the grant of an injunction. In my judgment, it is both just and convenient to grant an injunction which will be for one year against persons unknown in substantially the terms which have been sought.
62. I should say that I have also had regard to the guidance as to precautionary injunctions summarised in *Vastint*. In relation to those factors, I am satisfied that there is a strong possibility that, unless restrained by way of an injunction, the Defendant, that is to say persons unknown, will act in breach of the Claimant's rights which, in the context of this claim, must be in breach of public law, the enforcement of which is the

responsibility of the Claimant. That possibility is apparent from the continued formation of unauthorised encampments in the borough, even after the grant of the interim injunction, and from their formation in neighbouring boroughs.

63. For reasons which I have already given, I am also satisfied that nothing short of an injunction will suffice: specifically, enforcement under the CJPOA has proved and is likely in future to prove ineffective and inefficient.
64. I am also satisfied that the resulting harm of the foreseeable breaches would be of a nature that could not be adequately compensated for by damages. This is not least because the Defendants, for present purposes, are persons unknown and the likelihood of obtaining an enforceable damages award against such persons is low.
65. In addition, it is the inhabitants of the borough who, at least for the most part, suffer the harms which it is sought to prevent. A breach of planning control **per se** cannot be compensated for by way of damages, nor can various of the nuisances that flow from the breaches and which are suffered by the local inhabitants including exclusion from public amenities such as parks or the suffering of public health risks from the deposit of human waste.
66. As to the other factors mentioned as relevant in paragraph 31(4) of Marcus Smith J's judgment in *Vastint*, first the infringements are not entirely anticipatory. Steps that a Claimant might have taken to ensure that infringements did not occur are therefore of more limited significance than in the case where the infringement can be categorised as entirely anticipatory. That said, it is apparent from the evidence, as I have already mentioned, that the Claimant has taken other steps to seek to control and prohibit encampments.
67. Secondly, the continued formation of encampments in the borough indicates that there subsists a desire and propensity to form encampments and it can be reasonably inferred, and I infer, that should the interim injunction not be continued, a greater number of encampments will be formed, as was the position prior to the interim injunction. Thirdly, the continued formation of encampments in the borough, and to a greater extent in neighbouring boroughs which do not have the benefit of an

injunction, indicates that the breaches and resulting harm are imminent and, to some extent, already occurring.

68. In the circumstances, to the extent that a consideration of the factors identified in *Vastint* adds, in the present context, to the *Wolverhampton* guidance, I am satisfied that an injunction is justified by reference to those matters as well.

Named Defendants

69. As to the Named Defendants, none has formally acknowledged service of or defended the claim. Pursuant to paragraph 3 of the order of 12 May 2022, the Claimant produced a Scott Schedule for each Named Defendant against whom the claim was proceeding, setting out the allegations against each such Defendant. Each of those allegations is of a breach of planning control and trespass and of various nuisances and harms caused by each encampment.
70. I am satisfied that applying the approach summarised in *Vastint* in relation to the Named Defendants, an injunction is justified in their case, as it is in the case of persons unknown. I accept the submission made on behalf of the Claimant that to the extent that there is limited evidence of the Named Defendants forming recent encampments in the borough, that is to say since the grant of the interim injunction, this is consistent with the interim injunction working effectively. I also accept that the reduction in the incidence of the conduct complained of since the grant of the interim injunction, is not a reason to grant final injunctive relief. I was referred to the case of *S v Poole Borough Council* [2002] EWHC 244 (Admin) at [19] per Simon Brown LJ.
71. There is no evidence of any specific hardship which will be suffered by Named Defendants to set in the balance against the legitimate desire of the Claimant to enforce planning control and prevent nuisance. In the circumstances I am satisfied that it is just and convenient to grant a final order as against the Named Defendants.
72. Though the *Wolverhampton* guidance does not apply to named Defendants, I consider that it is appropriate to set a term to that injunction and that will be a term of five years.

Power of arrest

73. The Claimant seeks that there should be a power of arrest attached both to the injunction against the Named Defendants and that against Persons Unknown. I have already referred to the fact that when an injunction is granted and an action brought pursuant to section 222 of the Local Government Act, a power of arrest may be attached to any provision of the injunction pursuant to the Police and Justice Act section 27. The interim injunction in this case was originally granted with a power of arrest that took effect against both the named defendants and persons unknown. In May 2021 Nicklin J discharged the power of arrest against persons unknown. Currently it takes effect against the Named Defendants only.
74. I consider, however, that it is appropriate and expedient that a power of arrest should be attached to the injunction against both the Named Defendants and Persons Unknown. This is a case in which, for the purposes of section 27(3) of the Police and Justice Act, there is a significant risk of harm to persons in the category mentioned in section 27(2) of the Act, and I am satisfied that a power of arrest is the most effective and efficient mechanism by which the order can be enforced, including and especially against persons unknown. I accept the submission made on behalf of the Claimant that without the power of arrest the mechanism for enforcement would be by way of committal proceedings, and that such proceedings are, at least ordinarily, only effective where the identity of the alleged contemnor is known and where they can be personally served with committal proceedings.
75. I also accept that committal proceedings are a slower enforcement mechanism than the power of arrest, which in turn enables an encampment to remain **in situ** for longer and allows further harm to be caused and accumulate in the meantime. I am satisfied that the power is unlikely to be abused. In this context I note that the Claimant has not in fact sought the arrest of any person under the power of arrest which was attached to the interim injunction.

Overall Conclusion

76. Accordingly, I will grant a five-year injunction order in substantially the same terms as the interim injunction order against the remaining Named Defendants and a one year injunction order in substantially the same terms as the interim injunction order in relation to Persons Unknown.
77. As was done in the case of *Test Valley Borough Council v Bowers* recently, I propose to adopt the course that in the case of the injunction against Persons Unknown, there should be a review hearing fixed for 50 weeks from the date of the order and if the Claimant does not at that hearing seek the continuation of the order, it will then lapse at the end of its year's term.
78. I will now review in detail the terms of the draft orders which have been submitted.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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