Neutral Citation Number: [2024] EWHC 1900 (KB)

Claim No. KB-2024-CDF-000030

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

21 June 2024

Before:

HIS HONOUR JUDGE KEYSER KC
sitting as a Judge of the High Court

Between:

BLAENAU GWENT COUNTY BOROUGH COUNCIL

Claimant

-and-

(1) LUKE SALATHIEL
(2) BRIAN (AKA THOM) SALATHIEL
(3) THOMAS BRYAN
(4) PERSONS UNKNOWN STATIONING CARAVANS AND/OR OCCUPYING CARAVANS ON LAND LYING BETWEEN PORTERS ROAD AND BANNA BUNGALOWS, NANYTGLO

Defendants

Douglas Edwards KC appeared on behalf of the **Claimant**.
Elana Keymer appeared on behalf of the **Defendants**.

JUDGMENT

JUDGE KEYSER KC:

1. This is a further hearing of the claimant's application dated 26 April 2024 for an interim injunction against the defendants. The application was issued, together with a Part 8 claim, for a final injunction pursuant to section 187B of the Town and Country Planning Act 1990, which provides in relevant part as follows:

> "(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."

2. At a with-notice hearing on 1 May 2024, I granted a limited prohibitory injunction. However, on that occasion, the claimant did not pursue its application for a mandatory injunction, because the defendants indicated through their solicitor advocate that they had had only a limited opportunity to consider the claimant's evidence and wished to file evidence going beyond the three relatively brief witness statements, one from each of them, that they had filed for that hearing. I made, accordingly, a direction that they file and serve any further evidence in response to the application by 22 May 2024 and that the claimant file any further evidence in response by 7 June 2024, and I listed the matter for further consideration today.

3. The defendants were not in a position to comply with the timetable for the production of their further evidence, and the parties engaged in correspondence in that connection. By a consent order on 23 May 2024, I varied the directions timetable so that the defendants' evidence was required to be filed and served by 29 May 2024 and the claimant's responsive evidence by 14 June 2024. In the event, the defendants have not filed any further evidence and they have not acknowledged service of the claim. For the purpose of this return date, the claimant has filed four witness statements: one from Hayley Hawkins, dated 11 June 2024; one from Mark Congreve, dated 14 June 2024; and two from Steph Hopkins, dated respectively 14 June and 19 June 2024. I have read all of those statements as well as those previously filed.

4. The application relates to land lying to the east of Banna Bungalows, Nantyglo, Ebbw Vale, which I shall call "the site". The evidence shows that the site was in the past used for the deposit of spoil from coal and iron workings, but around 1970 it was infilled to form an even grassed slope, rising from a row of cottages to the west, that is Banna Bungalows. The site in that form—before the events giving rise to this application—is shown in a photograph at page 81 in the hearing bundle.

5. The claimant is the local planning authority for the borough of Blaenau Gwent, within which the site is situated. I remark, in passing, that it is also the owner of nearby land, which it claims is the dominant tenement in respect of a restrictive covenant applying to the site; however, that alternative basis for the proceedings has not been relied on for the purpose of this hearing and I shall ignore it.

6. The named defendants are the owners of the site, under two titles. They are members of the Traveller community and, according to the evidence before me, are normally (or, at least, were normally until the Easter weekend of this year) resident at the Cwmcrachen Gypsy and Traveller site, which is owned and operated by the claimant authority and is about quarter of a mile from the site as the crow flies.

7. Over the Easter weekend, 29 March to 1 April 2024, the defendants carried out significant earth works on the site to level a significant part of what had formerly been sloping land. The works have been described as a cut-and-fill operation. The claimant deems the works to be an engineering operation requiring planning permission; that has not been disputed. No planning permission had been granted, nor had any been applied for, for that operation.

8. On 5 April 2024, the claimant served a temporary stop notice, requiring the cessation of unauthorised operational development, including excavation of the land, importation of material, reprofiling embankments and hard surfacing. That temporary stop notice was due to and did expire on 2 May 2024, and it was that in particular that led to the application before me on 1 May 2024 for an interim injunction.

9. In addition to the engineering operations, the defendants brought onto the site various items, including in particular six touring caravans. The claimant deems the stationing of touring caravans on the site to be a further breach of planning control as no planning permission for

the use of the land in that regard has been granted or indeed applied for. Again, that is not disputed.

10. The claimant's evidence on the occasion of the first hearing was that the defendants had told them that they were sleeping overnight in one or more of the caravans for security purposes and intended to provide three permanent pitches for 55' caravans for travellers on the site, as they considered the existing Cwmcrachen site to be unsuitable for their families on account of inadequate facilities and a cramped layout. (See the witness statement of Stephen Smith, in particular at paragraph 26.) I note that that in itself is indicative of an intention to use the site for occupation by the defendants and their respective families. The use of the site for residential purposes in caravans would also be a breach of planning control in the claimant's opinion, in the absence of planning permission.

11. The extent of the engineering works appears in photographs at pages 82 to 84 of the hearing bundle, which form a comparison with the photograph on the preceding page, page 81, to which I have already referred.

12. The application as originally advanced complained that the nature and extent of the works and their proximity to the residential properties at Banna Bungalows raised immediate safety concerns. The claimant had at that stage an initial, largely desktop geotechnical report, which provided a measure of reassurance that there was no immediate threat from instability to the surrounding land, although sound engineering practices had not been followed and remedial work was required to stabilise the land and provide adequate drainage and otherwise make good. It was, however, unclear whether excavation of the site had exposed contaminated material. In this regard, I refer to paragraphs 20 to 24 of Stephen Smith's statement. It was noted at the time that the site was not connected to any services (gas, water and electricity) and that it had no foul sewerage or surface water drainage, though the claimant had agreed that the defendants could bring a Portaloo onto the site.

13. The more recent evidence from the claimant comprises, in particular, the materials in the statements of Mark Congreve, who is a team manager in the claimant's Housing Solution Public Protection Service, and the evidence in and exhibits to the statements of Steph Hopkins. I shall come back to Mr Congreve. The evidence given by Steph Hopkins is that the claimant commissioned a company called Tetra Tech Limited, which inspected the site

in late May and on 13 June 2024 and produced a draft desktop study and ground investigation report. When Ms Hopkins wrote her first statement, the report was in draft, so that the claimant could consider it and raise questions that could be addressed in the final report. To her second witness statement, Ms Hopkins exhibits the final report, which was received by the claimant on Monday or Tuesday of this week. The conclusions in paragraph 20.1.1, "Geotechnical", say:

> "Analysis of the slope has shown that it is unstable with factors of safety in both the new cut and fill slopes being less than one required by EC7. The newly constructed slopes to create the plateau have been constructed too steep and no drainage has been included as part of the reprofiling to deal with surface water or ground water flow. It is not possible to put a magnitude or time scale on any likely failure and there are receptors at risk comprising users of the site, users of the adjoining gardens and users of Porters Road. Therefore, the risk level stated in section 15.2", which I am not reading, "is very high (unacceptable and act now to prevent). Remedial measures to stabilise the slope should be implemented. Measures could include a regrade of the existing slope to lessen the slope angles or support with gravity retaining wall or similar. No ground water was encountered during the drilling of the exploratory holes but longer term monitoring should be considered, depending on the chosen remedial options for the slope. The site is considered high risk with regards coal mining legacy issues. The site is underlain by recorded past shallow coal mining and a three coal seam stood out beneath the site that could potentially have been worked in the past. Should the development remain and further works, including rotary probe drilling, should be undertaken to mitigate the risk of subsidence associated with coal mining hazards present".

So two stability issues are identified: one to do with the slopes and the risk of collapse, and the other to do with the risk of subsidence associated with coal mining hazards which, as yet, cannot be identified because they have not been explored.

14. Paragraph 20.1.2, "Ground Contamination", states, in part:

> "The site has been subject to reprofile of existing soils and the importation of ground materials. Soils obtained from the site were scheduled for laboratory testing as part of the ground investigation. This analysis was undertaken on both soil samples and soil derived leachate samples and the results were used to undertake a risk assessment process.
>
> Human health: With regards to the risks to human health, the risk assessment has been taken undertaken within the context of a residential educe, without the inclusion of plant uptake. Due to the

> presence of elevated concentration of PAH compounds and beryllium in the near surface soils, a moderate risk has been assigned with respect of site users. This indicates work should be undertaken to remove the exposure pathway between the onsite soils and the site users. This may be through the placement of a clean cap across the site, removal of impacted soils or the placement of hard-standing to effectively remove direct contact with the soils. Risks to adjacent users are considered to be limited, due to the limited direct exposure to these shallow soils".

Accordingly, the ground contamination risk is identified as being in respect of the exposure to the surface of compounds and minerals in the near surface soils that present a health risk to those in close proximity to the surface.

15. Mr Edwards KC tells me that, in the light of the report in its final form, the council is considering, together with Tetra Tech, the necessary remediation options. This is not something that can be done overnight, though it is hoped it can be done within a relatively short timescale. The options being considered by the council include the use of an enforcement notice (which would have the potential disadvantage of being held up by an appeals procedure) or the seeking of a mandatory injunction from this court, which would require the amendment of the Part 8 claim so as to include an appropriate form of mandatory injunction.

16. The evidence filed by the defendants for the first hearing in their three witness statements included the following. The first defendant said that his wife had a pitch on the Cwmcrachen site, but that he was not able to be with his family properly there because the pitches were very small, having enough room only for one van (I do not know whether that meant van or caravan), rather than for the two that were required— one for the parents and younger children and one for the older children. I should say that the family includes four daughters. He implied that the Cwmcrachen site was a fire risk, stating that he had lost two cousins to a fire at the site over the years. (I was not quite clear what that meant: the reference was to "a fire" but also to "over the years". If it was over the years, that suggests more than one fire. The specific complaint is unclear.)

17. The second defendant, similarly to the first defendant, said he was currently living on the site. He said that he and his long-term partner had what he described as "a very rocky relationship". They had four children together, aged between 14 and seven years. His

partner had a pitch on the Cwmcrachen site, where she occupied a caravan with their children, but conditions were too cramped and this was taking its toll on her mental health. He too mentioned the fire risk and said that he could not live in the caravan at the Cwmcrachen site as there was not enough room, and he said that at that moment his two daughters were staying with him on the site (that is, the present development site).

18. The third defendant, likewise, said that he was living on the site. He said that he had been on the road for the majority of his life, but that his wife had grown tired of that life and had taken a tenancy on the Cwmcrachen site; I believe that was in January 2024. He said that, because of the cramped conditions, he could not take a second caravan onto the council site as his wife was "terrified of fire". He said that the cramped conditions were affecting her mental health. He said that he knew that he ought to have had permission before doing the works, but that he believed that he had no alternative to what he had done. He said that his four children aged between 12 and three were with him three days a week.

19. The defendants asked to be able to stay on the site until planning matters were attended to and, as I have already said, they asked for more time to prepare their case.

20. The injunction granted on 1 May 2024 prohibited any new breach of planning control (paragraphs three, four and five) and prohibited anyone other than the defendants personally living on the site, including by way of staying overnight, (paragraph six,) but it did not restrict daytime visits by members of the defendants' respective families.

21. Mr Congreve's witness statement is by way of response to the evidence adduced by the defendants on the last occasion. He sets out evidence of how the Cwmcrachen site is operated and managed. There are 19 pitches and a permanent office of the housing team, generally occupied from 9 am until 5 pm; if, as occasionally happens, staff are not present, contact details are available. He said that most of the pitches, including those occupied by the defendants, "are of a size to accommodate a chalet or static caravan, a touring caravan and an amenity block building". The amenity blocks all include a kitchen and bathroom. In each case, it is the spouse or partner of the defendant that has the agreement with the council. The first defendant's pitch is pitch nine. It has a chalet, a touring caravan and amenity block, as does pitch seven, which is the second defendant's pitch. The third defendant's pitch, pitch 13, has two touring caravans and an amenity block. The layout of

the site and the positions on site of those respective pitches are shown on the photograph at page 233 in the bundle and the pitches are shown respectively in the photographs at pages 280 and 281 of the bundle. Mr Congreve sets out the records of the defendants' occupation of the site. He comments that it is the general pattern of the defendants to leave the Cwmcrachen site during May to September of the year, though that has not been done this year. He notes that none of the defendants have presented themselves as homeless.

22. The defendants put forward statements regarding the mental health of their respective partners or spouses and the physical health of their children, some of whom were said to be well, though some not. Mr Congreve sets out the details of known health concerns in respect of some but few of the children. He says that no reports of mental health problems have been received in respect of the defendants' partners or spouses.

23. The defendants complain that the Cwmcrachen site is not well maintained. Mr Congreve disputes that and gives evidence of a published complaints procedure, under which any complaints are dealt with. As regards fire concerns, Mr Congreve's evidence is that there have been no recorded deaths or injuries on site on account of fire during the 10 years that he has worked in post and that he is not aware of any records of such deaths or injuries before that date. He acknowledges that the pitches are closer together than is desirable in terms of fire safety; this is because of the relative age of the site, which is not laid out as a new site would be. However, the issue has been addressed by the provision and maintenance of fire extinguishers on site and by the provision of advice and the site is considered to be safe. Mr Congreve further comments that there have been issues with occupiers accumulating large amounts of scrap on site and bringing large numbers of vehicles on site. The former issue, he says, has been resolved, but the latter issue has not.

24. The council have addressed me on the principles for granting an injunction by reference to the familiar principles set down by the House of Lords in *American Cyanamid Co v Ethicon Limited (No 1)* [1975] AC 396. It is agreed that there is a serious question to be tried. It is agreed that damages are not an adequate remedy for the claimant. I think they would not be an adequate remedy for the defendants either.

25. As for the balance of convenience, Miss Keymer, for whose skeleton argument and oral submissions I am grateful, drew my attention to a number of relevant legal matters. The first

is the guidance of the House of Lords in *South Buckinghamshire District Council v Porter* [2004] UKHL 33, approving what Simon Brown LJ had said in the Court of Appeal in his judgment at paragraphs 38 to 42. I shall not read the passages out verbatim but I shall pick out a number of points. First, it is not for me to reach my own independent view of the planning merits of the case. Indeed, those are not disputed, at least as regards the fact that the defendants carried out unauthorised development without planning permission and in breach of planning control. Second, a judge should not grant injunctive relief unless he would be prepared, if necessary, to contemplate committal for breach of the injunction; and, in considering that, one must consider all questions of hardship for each respective defendant and his family if required to move. Thus the availability of suitable alternative sites is relevant. So too is consideration of the families' health and education and of other matters of hardship that might arise. At paragraph 41 of his judgment Simon Brown LJ said that the grant of an injunction was unlikely to be appropriate, unless it was thought to be proportionate. Ms Keymer also referred me to the remarks of Hickinbottom J in *Stevens v Secretary of State for Housing and Communities and Local Government* [2013] EWHC 792 (Admin) regarding the relevance of the wellbeing of children in the planning process: see paragraph 69. She also referred me to Public Sector Equality Duty and section 149 of the Equality Act 2010.

26. Turning to the facts, Ms Keymer's submissions were to the following effect. The existing evidence as it stands, which does involve a dispute on some matters of fact, supports the defendants' position that they ought not to be required to leave the site or to remove their caravans from it, because the balance of convenience lies in their favour. If they were required to leave the site, irremediable prejudice would be caused, both to them and to their respective families. They are actually now residing on the site. They are not able to go to the Cwmcrachen site to reside. The pitches are not in their names, but in the names of their respective partner. The conditions on the Cwmcrachen site are poor and overcrowded and incapable of being rearranged so as to accommodate the defendants. The overcrowding on site has health and well-being implications for the children and mental health implications for the defendants' partners. There is no other available pitch: there are no other available pitches on the Cwmcrachen site and there are inadequate numbers of pitches within the claimant council's area. Indeed, the claimant accepts that there is need for eight further pitches within its area. The defendants have not breached the last injunction. They are

willing to carry out any remedial works that might be necessary. They are able to accommodate their caravans at two positions on site, in particular in the triangular area at the top end of the site, while remedial works are being carried out. They currently care for their children during the day on site, thereby relieving their respective partners of obligation and pressure during the day. Accordingly, it is submitted, the balance of convenience lies against the grant of a mandatory injunction, although it is accepted that the current prohibitory injunctions ought to be kept in place.

27. In my judgment, although those submissions were made very forcibly and cogently by Ms Keymer, the balance of convenience clearly lies in favour of the grant of a mandatory injunction, and I shall grant such an injunction.

28. The operations carried out by the defendants were a flagrant and serious breach of planning control. They were also carried out covertly over the Easter weekend, in order (as I am satisfied) that by the time anyone was able to address what had been done it would be a *fait accompli*.

29. The resulting position is unsatisfactory, indeed intolerable, in a number of respects. There are no services to the site. There is no drainage on the site. The evidence now provided through the reports from Tetra Tech indicates a situation that, though one ought not to be alarmist about it, is actually quite serious. The particular concern relates to the stability of the slopes that ought never to have been created and that affect safety both on the site and adjacent to it. The high risk that Tetra Tech have assessed is a matter of the uncertainty that exists regarding both the timing and of the scale of any potential collapse. It is, as I accept, quite possible that nothing untoward will happen, at least for some time. But the level of risk is high, simply because it is also possible that something seriously untoward will happen. Further, there is also the distinct point made by Tetra Tech that the workings underneath the site have not been explored and give rise to what is at this stage an unquantifiable risk of a collapse within the site on account of subsidence. That is precisely the sort of risk that can be considered in the planning process, but instead these works have been carried out and the site has been occupied without the analysis that compliance with the planning process would have involved. Additionally, there is the matter of possible on-site contamination; this by itself would, in my view, constitute a sufficient reason of the public interest in maintaining health for the grant of an injunction.

30. The arguments raised against these points rest at the mere level of assertion. For example, it is said that the defendants and their families would be prejudiced by the grant of a mandatory injunction, because the defendants cannot live on the Cwmcrachen site. But there is no evidence that they were not living on the site until the Easter weekend; indeed, there is positive evidence that they had been living there. It is said that there are tensions in the defendants' relationships with their respective spouses and partners. But there is no evidence that they have been kicked off the Cwmcrachen site or are unwelcome there by their spouses or partners, and the defendants have not presented themselves as homeless. It is said that the defendants' spouses and partners are suffering with mental health problems. But this is unsupported either by evidence from the partners or by medical evidence. For reasons that I have already indicated, the evidence of overcrowding goes no further than to indicate that the amount of available space within any one pitch might be less than ideal, but it does not go so far as to indicate that accommodation on the pitch is not available. As far as the health of the children is concerned, I frankly cannot see any basis for supposing that the presence of the defendants overnight on the Cwmcrachen site would be adverse to the health of the children; what is said in that regard does not seems to me to stack up.

31. I have regard to the guidance given by the House of Lords and Simon Brown LJ and to the matter of proportionality, but in my judgment the balance of convenience shows no justification for allowing the defendants to continue to flout planning control. Accordingly, I will make the mandatory injunction that is sought.

32. The order that I shall make includes both prohibitory and mandatory injunctions. It is incumbent on the claimant council to consider its intended course of action as soon as practicable and to deal with the Part 8 proceedings as promptly as is reasonably possible. In saying this, I acknowledge that the question about precisely what form of final relief will be sought is not one that can be answered overnight and without proper and informed consideration.

End of Judgment

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