

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: Thursday, 25th July 2024

Before:

ANDREW KINNIER KC
(Sitting as a Deputy Judge of the High Court)

Between:

**THE MAYOR AND BURGESSES OF THE ROYAL
BOROUGH OF KINGSTON UPON THAMES**

Claimant

- and -

(1) MICHAEL CASEY

Defendants

(2) BRIDGET CASEY

(3) SIMON DOHERTY

(4) KATHLEEN DOHERTY

**(5) PERSONS UNKNOWN, BEING THOSE
PERSONS CAUSING OR PERMITTING WORKS
TO BE UNDERTAKEN, OR WASTE OR OTHER
MATERIAL TO BE DEPOSITED ON THE LAND,
AND/OR BRINGING ONTO OR OCCUPYING
CARAVANS OR MOBILE HOMES ON THE
LAND OR INTENDING TO DO SO, OTHER THAN
IN ACCORDANCE WITH A VALID GRANT OF
PLANNING PERMISSION**

(6) TOM DOHERTY

(7) THOMAS CASEY

(8) MICHAEL CASEY JUNIOR

MR. CHARLES STREETEN (instructed by **South London Legal Partnership**) for the
Claimant

THE DEFENDANTS did not appear and were not represented

JUDGMENT

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ANDREW KINNIER KC:

1. By a claim form dated 5th July 2022 the Royal Borough of Kingston Upon Thames Council applied for an injunction under section 187B of the Town and Country Planning Act 1990 and section 222 of the Local Government Act 1972.
2. The injunction is sought against a number of individuals, first of all, four named defendants: Michael Casey; Bridget Casey; Simon Doherty; and Kathleen Doherty as well as Persons Unknown. The injunction is also sought against Tom Doherty, Thomas Casey and Michael Casey Junior who the Council seeks to join as the sixth, seventh and eighth defendants. I shall come to that application in due course. The application for an injunction relates to caravans/mobile homes which are stationed on land known as Birches at the side and rear of Kenwood, Green Lane, Chessington otherwise than in accordance with a valid grant of planning permission. The land is registered under Title Number SY263578.
3. There are three applications before me today. First, the application for an interim injunction which as against the first to fourth defendants has been agreed. Secondly, there is the Council's application to join the sixth, seventh and eighth defendants and for interim relief against those individuals. Finally, there is the application for an interim injunction against Persons Unknown.
4. Before dealing with the three applications, it is necessary to set out the background in some detail. The starting point is the site itself. It is a former piggery within the designated Metropolitan Green Belt and is roughly 1.12 hectares in size. The freehold of the land is registered at the Land Registry and, as I said, under Title Number SY263578. The registered freeholder is, and has been since 28th April 2003, Michael Casey, the first defendant. The up-to-date Office Copy entry confirms that position

notwithstanding an unsubstantiated suggestion that the ownership may have changed recently. On that point, the Council has not located any official documents to confirm that the freehold has been transferred to any other person and as the Office Copy entry confirms, Mr. Casey remains the registered freeholder.

5. The matters which have prompted the applications have a long history which is set out in detail in paragraphs 5 to 78 of Mr. Feltham's first statement and in the exhibited materials at pages 67 to 387 of the hearing bundle. For today's purposes I should draw out the following facts and matters which preceded the Council's visit to the land on 15th May of this year.
6. On 30th April 2003, in an attempt to restrain the unauthorised development of the site, the Council sought and obtained an injunction against the first and third defendants made by Pitchers J before whom the first and third defendants were represented. The injunction is at pages 97 to 102 of the bundle and its substance is at paragraph 1 which materially reads as follows:

“... until trial or further order in relation to Land known as Land to the side and rear of Kenwood, Green Lane, Chessington, Surrey ('the Land') upon which there are currently stationed four caravans, the defendants whether by themselves or by instructing, encouraging or permitting any other person must not utilise the Land in breach of planning control and in particular must not:

(1) Bring on to the Land any further caravans and/or mobile homes either as a replacement or otherwise without the written permission of the Claimant for the purpose of residential occupation or any other purpose in breach of planning control;

(2) Bring on to the Land any portable structures including portable toilets and any other items and paraphernalia for purpose associated with residential occupation or any other purpose in breach of planning control save for those structures already in situ on the Land;

(3) Bring on to the Land any waste materials and/or any hardcore for any purpose including the creation of hardstandings or hard surfaces in association with the use of the Land for the stationing of caravans

and/or mobile homes for the purpose of residential occupation or any other purpose in breach of planning control;

(4) Carry out any further works to the Land associated with or in preparation for its use for siting caravans and/or mobile homes for residential occupation or any other purpose in breach of planning control save for the connection of pipe work to the existing cesspit.”

A Penal Notice was attached to the injunction and both that Notice and the injunction remain in force.

7. On 9th May 2003, the Council issued a claim seeking a final order in the form of the injunction of 1st April 2003 against the first and third defendants. That claim was ultimately compromised by a consent order sealed on 26th October 2005, a copy of which is at page 118 of the bundle. In summary, the claim was stayed on the basis that the first and third defendants gave two undertakings to the court. By the first, they undertook not to breach the terms of the injunction of 30th April 2003. By the second, they promised not to carry out any activities in breach of planning control as defined in Part 7 of the 1990 Act.
8. From October 2008 there were no reports of breaches of the injunction or the undertakings and so the Council had no involvement with the site again until April 2012. On 16th April 2012, the first defendant applied for permission for continued use of land for two gypsy pitches together with the formation of additional hardstanding and utility day rooms ancillary to that use. Conditional permission was granted on 12th October 2012 and a copy of that decision is at page 136 of the bundle. Importantly, Condition 1 provided that permission under that decision would be limited to three years only.
9. For present purposes the next relevant date is October 2018. Following an appeal, planning permission in relation to the Land was granted to the first defendant in the

terms summarised at paragraph 56 of Mr. Feltham’s statement. I will not quote the detail of those extensive terms here, but I note that permission was granted subject to seven Conditions which, for the purpose of this judgment I will refer to as “the Conditions”.

10. In May 2019, the Council became aware of various breaches or potential breaches of the Conditions. In short, more than the permitted number of caravans was on the land and required works had not been completed within the requisite timeframes. As a result, a Breach of Condition Notice was served on the first and third defendants. This Notice is at page 158 of the bundle. Thereafter, the number of caravans on the Land has varied but the works have not been completed in accordance with Condition 7 of the Conditions.
11. On 1st May 2020, a Temporary Stop Notice was served by the Council on the first and third defendants under section 171E of the 1990 Act warning that committal proceedings would be started unless they stopped bringing hardcore and other waste on to the Land, which act was in breach of the injunction, the consent order and the Conditions, at least in the Council’s view. A further Temporary Stop Notice was served on the first and third defendants on 1st April 2022 following reports of 10 lorries bringing hardcore to the site in breach of the injunction, the consent order and the Conditions.
12. The current position as found at a site visit by the Council’s officers on 15th May 2024 can be summarised thus. The evidence of Mr. Feltham indicates that there have been four breaches or at least categories of breach of the injunction, consent order and the Conditions.

13. First, photographs obtained from a drone which were taken on 24th January of this year show an extensive area of elevated hardstanding surrounded by a retaining wall on three sides. That position was confirmed on the Council's site visit and is illustrated in the photographs at pages 320 to 384 of the bundle.
14. Secondly, as Mr. Feltham said, the necessary inference is that substantial amounts of hardcore have been brought to the site. Again, the very considerable amounts of hardcore are clear from the photographs taken by the Council's officers at their site visit in May of this year.
15. Thirdly, when the photographs taken in January 2024 are compared to the drawing prepared in 2014 referred to in Mr. Feltham's statement as "the Drawing", it is, in my judgment, plain that the site is substantially different in appearance from that dictated by the Drawing and so constitutes or at least potentially constitutes a breach of Condition 7 of the Conditions imposed in October 2018. As is clear from the Drawing, there should be an extensive residential garden including a hedgerow and other tree planting to the south east of the site. Those areas are now occupied by Plots 3 and 4 as illustrated on the site plan prepared by the Council and which is found at page 280 of the bundle and further illustrated by the photographs taken on 15th May 2024.
16. Fourthly, although the injunction allowed no more than four caravans on site the Council noted at least six caravans or mobile homes on site during the site visit on 15th May 2024. That again would appear to constitute a breach of the consent order and the Conditions.
17. Following service of the first application on the evening of Friday 19th July, during the afternoon of Tuesday 23rd July the Council received reports that two further

mobile homes were now in place on the Land. Mr. Dean's evidence suggests that one is placed on Plot 3 and the other on Plot 4 to use the designation set out on the Council's site plan at page 280 of the bundle.

18. That is a summary of the relevant background but it by no means conveys the detail which is fully set out in Mr. Feltham's statement and supported, in detail, by his exhibited materials.
19. I now turn to the application as against the first to fourth defendants. I am told by Mr. Streeten, who appears today on behalf of the Council, that that matter is agreed and that appears to be so from correspondence sent by solicitors instructed on behalf of the first to fourth defendants. I am content with the draft order in so far as it concerns the first to fourth defendants. In particular, for the purposes of fixing the return date, I am satisfied that the matter to be fit to be heard in the Vacation.
20. I should note that neither the first to fourth defendants have attended today and neither have they been represented by solicitor or counsel although I have received a very considerable amount of material from their solicitors yesterday which I have read and considered.
21. The next matter that I must consider is the application to join the sixth to eighth defendants. Because the claim has been served, the court's permission is required: CPR 19.4(1). The application may be made without notice but it must be supported by evidence: CPR 19.4(3).
22. On the evidence before me today as set out in the statements of Mr. Feltham and, in particular, the recent statement of Mr. Dean, I am satisfied that I may properly proceed with hearing the application without notice for a number of reasons. First,

urgency. The evidence before the court, particularly Mr. Dean's witness statement, suggests that following service of the claim form, this application and the other documents on the evening of Friday, 19th July 2024, the first and third defendants and others sought to bring two more mobile homes on to the site in what looks like an attempt to undermine or at least thwart the claimant's application for interim relief. Secondly, the order for substituted service made by Master Gidden on 10th July was complied with by the Council and so I am satisfied that reasonable steps have been taken to bring the claim form and the application to the notice of those occupying the site.

23. The application to join is governed by CPR 19.2(2)(a) and (b). In my judgment it is desirable that the sixth to eighth defendants are joined so that the court can resolve all matters in dispute and I am satisfied that there is an issue involving the new parties and the claimant which is concerned with and relates to the matters in dispute in the proceedings. In the circumstances, it is desirable to add the sixth, seventh and eighth defendants so that the court can resolve that issue.

24. My reasons are briefly as follows. First, there is positive evidence set out in paragraph 7 of Mr. Dean's statement that identified the sixth, seventh and eighth defendants as being involved in the siting of two more mobile homes on the afternoon of 23rd July, that is to say some four days after service of the documents on the defendants and substituted service on Persons Unknown. Secondly, there is nothing in the very substantial amount of material lodged by the first to fourth defendants which says or indicates that the sixth, seventh and eighth defendants have been wrongly identified. There is, therefore, a sufficient evidential basis to suggest (at the very least) that the sixth, seventh and eighth defendants are involved in potentially

unlawful activity on the site which the Council contends is in breach of planning rules, the injunction, the consent order and the Conditions. In the circumstances, it is desirable under both limbs of 19.2(2) for the sixth, seventh and eighth defendants to be joined to these proceedings.

25. I will ask for Mr. Streeten's assistance in due course but we should discuss service of those applications on the sixth, seventh and eighth defendants.
26. Although none attend today, it is open to the sixth, seventh and eighth defendants to make an application, supported by evidence, to be removed as parties under CPR 19.2(7). If that is their position, then that application, supported by evidence, can be made at the proposed return date sometime in late September.
27. I now turn to the question of interim relief against the sixth, seventh and eighth defendants. It is submitted, and I accept, that the approach the court ought to take is that set out in the case of *American Cyanamid*. There are essentially three stages: first, is there a serious issue to be tried; secondly, would damages be an adequate remedy; and, thirdly, does the balance of convenience favour granting the relief sought or not?
28. In my judgment there are plainly serious issues to be tried in this matter: first, whether all the defendants and Persons Unknown have acted in breach of planning control; secondly, whether the defendants and Persons Unknown have breached the injunction or been involved in the breach of injunction to which a Penal Notice attached of April 2003, the undertakings provided as part of the consent order in 2015 and /or the Conditions imposed in October 2018.

29. In my view damages are unlikely to be an adequate remedy in a case such as this. On that point, I have considered the case of *South Downs National Park Authority v Darrowby* [2018] EWHC 1903 (QB) and the statement of principle set out at paragraph 16.
30. The live issue is whether the balance of convenience favours granting the relief sought. In favour of granting the relief there are three principal considerations: first, ensuring compliance with planning requirements imposed by the local planning authority; secondly, ensuring compliance with the injunction, the undertakings given in the consent order and the Conditions; and, thirdly, absent an order, the evidence is – and this was aggravated by the recent siting of two more homes on 23rd July after the claim form and the application had been served – that the defendants and Persons Unknown will continue to flout planning requirements, the injunction, undertakings and Conditions.
31. Favours against granting relief, I think, are essentially two-fold: first of all, prejudice suffered by anyone who might want to move to the site. It seems to me that the countervailing answer to that point is that there are strong reasons justifying holding the line which effectively means prohibiting further breaches of planning control at least until a further hearing in or around September of this year.
32. In considering that point, I have paid particular attention to the interests of the child. There is some evidence to suggest that the interests of five-year old child of the third and fourth defendants may be affected by the granting of interim relief. In relation to this, it seems to me two factors are relevant. The evidence before the court suggests that the child does not live on the site. I was provided with a substantial bundle of material from solicitors acting on behalf of the first to fourth defendants yesterday

afternoon which included materials supplied in aid of various applications made on behalf of the third and fourth defendants' daughter. On all of the documents put before me the family's address was one in Ruxley Lane and not this site.

33. The second reason I note is the point made by Mr. Streeten in submission that bringing a young child, a five-year old child, on to the site when it is subject to this claim, against a long background of disputes regarding compliance with planning, and the turmoil that that would involve are unlikely to be in the child's interests.
34. So having considered those matters it seems to me that viewed overall the balance of convenience clearly lies in favour of holding the line and prohibiting further breaches of planning control until the next hearing or further order.
35. The other point I would make is that I am concerned about the events on 23rd July when two further mobile homes were brought on to the site following the service of proceedings on 19th July. That action, in which the available evidence suggests that the sixth, seventh and eighth defendants were involved, suggests an attempt at least to frustrate the point of the Council's claim which is to maintain the status quo for matters to be fully determined in due course at the final hearing.
36. So for those reasons I grant interim relief against the sixth, seventh and eighth defendants.
37. The final application is for interim relief against Persons Unknown. I have carefully considered and read the recent Supreme Court case of *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47.
38. Having carefully considered the case-law, the detail of claim set out in the claim form at tab 2 of the bundle and Mr. Streeten's written and oral submissions today, I derive

five principles from the *Wolverhampton* and *Barking and Dagenham* cases. First, local authorities seeking to prevent breaches of public law including planning law are empowered to seek injunctions by statutory provisions and an invoke the equitable jurisdiction of the court which extends to the granting of newcomer injunctions. The possibility of an alternative non-judicial remedy does not deprive the courts of jurisdiction: paragraph 170 of the *Wolverhampton* decision.

39. Secondly, 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 permit service by an alternative method or at an alternative place: paragraph 117 of the *Barking and Dagenham* decision.
40. Thirdly, any local authority applying for an injunction against Persons Unknown 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 this will cause real harm. Further, the threat must be real and imminent: *Wolverhampton* at paragraph 218.
41. Fourthly, although it would be impossible for a local authority to give effective notice to all newcomers of its intention to make an application for an injunction to prevent unauthorised encampments on the land, in the interests of procedural fairness any local authority intending to make an application for an injunction must take reasonable steps to draw the application to the attention of persons likely to be

affected by it or with some genuine and proper interest in it: paragraph 226 of the *Wolverhampton* decision.

42. Fifthly and finally, when considering whether to grant an injunction against persons unknown in the context of breaches of planning control by Travellers, the court 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. I have derived that from paragraph 238 of the *Wolverhampton* decision.
43. In my judgment the evidence demonstrates a compelling justification for the order sought. There is a longstanding history of apparent breaches of planning regulation and of various interventions made by the court, whether it is the 2003 injunction, the consent order of 2015 or the Conditions imposed by the planning authority in October 2018. As Mr. Streeten submitted in writing and orally, the circumstances which prompted the Council's application to join the sixth, seventh and eighth defendants (namely, placing two additional mobile homes on the site after the service of proceedings) vividly illustrate the justification for such an order. As Mr Streeten submitted, the two additional mobile homes were moved on to the site at or around the same time as solicitors for the first to the fourth defendants wrote to the Council stating that they would be grateful if the matter could be listed at a later date.
44. I also note the assurances given in a letter from the first to fourth defendants' agents at page 301 of the bundle that no further breaches of planning regulation or injunction and other matters would be committed. The events of the 23rd July cast significant doubt on the reliability of those assurances.

45. In the circumstances I am satisfied that no other remedy is adequate to deal with the conduct that that been committed. Mr. Feltham’s evidence set out, in detail, the many attempts by many means that have been attempted to regulate matters, most notably, by the injunction, the consent order, the Conditions and the various Temporary Stop Notices. Thus far, none of these has been lastingly effective.
46. For these reasons and given what has happened in the past and most recently, absent an order against Persons Unknown, there is a risk that the effectiveness of the interim injunction would be undermined. There is, therefore, a compelling reason to make this order.
47. In my judgment, the Council has accurately described the Persons Unknown against whom it seeks injunctive relief with sufficient clarity to enable those persons to be served with the proceedings albeit by an alternative method.
48. Finally, I am satisfied that the Council has taken reasonable steps to draw its application to the attention of persons likely to be affected by the injunction sought not least by correspondence with agents for the first to fourth defendants (which I referred to earlier and which can be found at page 301 of the bundle); correspondence with solicitors acting for the first to fourth defendants; and, finally, by service of the order for substituted service.
49. The making of an interim injunction against Persons Unknown would not be procedurally unfair. I therefore grant the relief that is sought.

(Discussion followed)

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