



Neutral Citation Number: [2024] EWHC 9 (KB)

Case No: KB-2023-002576

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 January 2024

Before:

HIS HONOUR JUDGE BLAIR KC
(Sitting as a Deputy Judge of the High Court)

Between:

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF RICHMOND-UPON-
THAMES
- and -
ALISTAIR TROTMAN

Claimant

Defendant

Francis Hoar (instructed by **South London Legal Partnership**) for the **Claimant**
The Defendant appeared in person

Hearing dates: 21 November 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 9 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE BLAIR KC.

His Honour Judge Blair KC:

The background

1. This is the final substantive trial hearing in proceedings brought under Part 8 of the Civil Procedure Rules in which the claimant seeks a prohibitory injunction against the defendant preventing him from mooring or anchoring any vessel adjacent to its Thames riverbanks. The claimant was granted an interim injunction against the defendant on the 11th of July 2023 by Lambert, J. which included a power of arrest pursuant to section 27 Police and Justice Act 2006.
2. Lambert, J. considered witness statements and exhibits from the claimant's Parks Operations Manager - Mr Almond (dated 19 May 2023) and from the Defendant (dated 11 July 2023). That hearing took place on notice, with the defendant present at court. As an interim application it was given a limited time allocation and therefore did not involve any testing of the served evidence under cross-examination.
3. The wording of the interim injunction sought on behalf of the Claimant was verbose, poorly expressed and ungrammatical in a number of its paragraphs. Nonetheless it was granted in the terms sought. Its principal terms were as follows:
 - (1) *An Interim Prohibitory injunction restraining the Defendant, whether by himself or by inciting or encouraging any other person,*
 - a. *from mooring on the River Thames situated near to or attached by any means to the riverbank of any towpath in the London Borough of Richmond-upon-Thames owned by the London Borough of Richmond-upon-Thames Council and remaining beyond the 24 hours restriction or such other restriction permitted;*
 - b. *from mooring on the River Thames to any land, wharf or property in the London Borough of Richmond upon Thames owned by the London Borough of Richmond upon Thames Council;*
 - c. *from bringing, mooring and leaving on the River Thames attached to or moored to poles in the River Thames so as to access a vessel by land owned by the London Borough of Richmond upon Thames or for any other purpose, without obtaining prior consent from the London Borough of Richmond upon Thames Council to enter its land or the River;*
 - (2) *An Interim Mandatory injunction against the Defendant as follows:*
 - a. *Not to moor, or trespass to the riverbank or attach to the land, by any means, including overhanging the river, or the use of gangplanks and scaffolding poles sunk into the riverbed and or by ropes to overhanging trees, any vessels owned or controlled by you, your agents or representatives to land owned by the London Borough of Richmond upon Thames Council, including permitted Council owned moorings;*
 - b. *By midday on 18th July 2023, to remove from any land, wharf or property (moored by any means) owned by the London Borough of Richmond upon Thames Council, any vessels owned or controlled by the you, currently moored to land or wharves owned by the London Borough of Richmond upon Thames Council;*
 - c. *By midday on 18th July 2023, to remove from any land, wharf or property owned by the London Borough of Richmond upon Thames Council the vessel 'KUPE';*
 - d. *This order will remain in force unless varied by an order of the court or until further order;*
 - (3) *The above order shall include a power of arrest.*

4. The defendant had been declared bankrupt on 16 June 2023. His estate, which included the entire shareholding of a company called Rivercabins Limited, vested in his trustee in bankruptcy. That company is the owner of the houseboat vessel called 'Kupe'. On 15 September 2023 enforcement agents appointed by the defendant's trustee in bankruptcy (together with others) attended the vessel Kupe and secured it on behalf of the trustee. Nonetheless, the evidence is that the defendant continued to use it as his dwelling for a short while thereafter.
5. The defendant sought permission to bring judicial review proceedings against the London Borough of Richmond (ACO-2023-LON-002771) in respect of the actions which were undertaken on 15 September, when the vessel was secured and the other residents of Kupe evicted. He also sought urgent interim relief, including a quashing of the power of arrest attached to the interim injunction, on the basis that it was unlawful or void. Fordham, J. declined to make an immediate order on 20 September 2023 and directed the London Borough of Richmond file a response. The application for permission to bring a judicial review was refused on 3 October 2023 by Deputy High Court Judge Gullick KC, who declared it to be totally without merit, because the actions undertaken on 15 September 2023 were not at the behest of the London Borough of Richmond but were undertaken on behalf of the defendant's trustee in bankruptcy. He observed that any complaints about the interim injunction were properly to be dealt with in the existing High Court proceedings.
6. The defendant appealed against the interim injunction made by Lambert, J. on a range of grounds (CA-2023-001493). However, on 16 November 2023 his appeal was dismissed upon a consideration of the papers and declared to be totally without merit.
7. The defendant was arrested on 22 September 2023 from Kupe for allegedly breaching the interim injunction. He was bailed by Mr Justice Choudhury. He was then again arrested on 25 September 2023 from Kupe for allegedly breaching the interim injunction. He was bailed by the same judge, but on this occasion with conditions of bail, prohibiting him (amongst other things) from going within five metres of the vessel known as Kupe, wherever it may be located.
8. The defendant appealed against the order imposing bail conditions upon him made by Mr Justice Choudhury on 26 September 2023. However, on 16 November 2023 that appeal (CA-2023-001982) was also dismissed upon a consideration of the papers and also declared to be totally without merit.
9. The claimant issued an application for the defendant's committal to prison for contempt of court in respect of the above alleged breaches of the interim injunction. That was due before the court on 28 November 2023. In support of its application for committal (which is plainly directly connected to these proceedings) the claimant served a number of witness statements, including a second statement from Mr Almond (dated 26 September 2023) dealing with the more recent evidence relating to the defendant and Kupe.
10. The claimant applied to rely upon that statement as part of its evidence in support of this hearing. Whilst the case management directions of Mrs Justice Lambert required the claimant to serve any additional evidence by 8 August 2023, relevant events have plainly occurred since then. The defendant did not oppose the claimant's application and I have therefore considered Mr Almond's additional evidence. (His second

statement also makes reference to additional exhibits, however those were not exhibited to his statement in the court bundle and I have not seen them.) The defendant has not served any additional witness statement beyond his statement of 11 July 2023.

11. I heard evidence on oath from both Mr Almond and Mr Trotman. Mr Trotman was advised of the privilege against self-incrimination and told he could decline to answer those questions in respect of which his answers might tend to incriminate him, particularly in connection with the pending committal proceedings.

The relevant legal framework

12. The public right of navigation on the River Thames is governed by the Thames Conservancy Act 1932. In particular section 79 states:
“79 (1)...it shall be lawful for all persons whether for pleasure or profit to go be pass and repass in vessels over or upon any and every part of the Thames...
“(2) the right of navigation in this section described shall be deemed to include a right to anchor moor or remain stationary for a reasonable time in the ordinary course of pleasure navigation subject to such restrictions as the conservators may from time to time by byelaws determine...”
13. This primary legislation therefore makes it lawful, by subsection (1), for a person, to go in a vessel, to be in a vessel, to pass in a vessel and to repass in a vessel, upon any part of the Thames, either for pleasure or profit. Additionally, by subsection (2), the right of navigation described by section 79 includes a right to anchor, moor, or remain stationary, for a reasonable time in the ordinary course of pleasure navigation, subject to any byelaws determined by the conservators restricting it further [now the Environment Agency].
14. Whilst the 1932 Act permits a vessel in the ordinary course of pleasure navigation to be moored (or anchored or stationary) whilst it is over or upon the River Thames for a reasonable time, it does not purport to address the rights and relationships between persons navigating such a vessel and the owners of the banks of the River Thames.
15. To consider the legal obligations in this case affecting the navigation of a vessel in relation to the owner of the relevant bank of the River Thames one has to look at the claimant’s ‘Byelaws Relating to Mooring’ of 2015, promulgated pursuant to their powers under section 235 of the Local Government Act 1972 “for the good rule and government of the London Borough of Richmond upon Thames and for the prevention and suppression of nuisances.” Byelaw 4(a) reads as follows:
“4(a) Except in cases of an emergency or other unavoidable cause, no person shall on any land designated in Schedule 1 and shown delineated in red on the attached Mooring Byelaws Borough-wide Plan and Mooring Byelaws Detailed Plans 1 to 37 moor any boat or permit any boat to be moored for longer than a maximum period of 1 hour in any period of 24 consecutive hours (beginning with the time at which the boat first moored on the

land) without the prior written consent of the Council.”

16. Byelaw 1 provides definitions of its terms, which include:
“land” means any land owned or managed by the Council abutting the tidal and non-tidal stretches of the River Thames and includes the banks, walls and embankments...
“moor” means the act of being physically attached to the land, physically touching the land, or tied to objects in the land, by way of ropes, gangplanks, stakes in the ground, or other similar methods.”
17. Breaches may be prosecuted in a magistrates court and the maximum penalty following conviction is a fine not exceeding level 2 on the standard scale (currently £500) – Byelaw 10.
18. The part of the claimant’s riverbank which is in issue in this case lies between points 19 and 20 in Schedule 1, described as ‘Ham Lands (opposite Burnell Avenue), Ham, Richmond (non-tidal)’, and in the Mooring Byelaws Detailed Plan 14 as delineated in red. It is upstream of Teddington Lock and there is abundant evidence that Teddington Lock has been regarded as the upper limit of the tidal Thames for more than a century. I reject Mr Trotman’s oral evidence to the contrary.
19. In an appeal by way of ‘case stated’ from a magistrates court to a Divisional Court for a breach of this same byelaw, Beatson, L.J. confirmed its legal validity when challenged as having been made *ultra vires*, see *Akerman v London Borough of Richmond* [2017] EWHC 84 (Admin). His reasoning was comprehensive and his conclusions incontrovertible. These byelaws are legally valid and enforceable. He also made reference to the following authority, from which I will quote more extensively on the topic of ‘public nuisance’.
20. In *Couper and others v Albion Properties Ltd, Port of London Authority and Hutchison Whampoa Properties (Europe) Ltd* [2013] EWHC 2993 (Ch.) Arnold, J. reached the following conclusions:

“530...On the other hand, the Claimants are not entitled, in pursuance of the public right of navigation, to obstruct the river: see *Halsbury's Laws* volume 101 §692.

531 With highways on land, any permanent obstruction is a nuisance: see *East Hertfordshire District Council v Isabel Hospice Trading Ltd* [2001] JPL 597 (Jack Beatson QC sitting as a Deputy High Court Judge, as he then was) at [15]. The position as to the obstruction of a navigable river appears to be a little more relaxed, but not much. In *Attorney-General v Terry* (1874) 9 Ch App 423, a case about the construction of a platform on piles in the River Stour, Lord Cairns LC said at 431:

"It was argued before us that this was no real obstruction, and that therefore the Court should not interfere; but this appears

to me to be exactly one of those cases in which the obstruction should be at the outset be challenged by those who are conservators of the river. If three feet be taken at one time unchallenged, then six feet might be taken at another time. I cannot say that there might not be an encroachment of so trifling a nature that this Court would not interfere, but a subtraction of three feet from sixty feet is a tangible and substantial interference with the navigation, and is a subtraction which ought to be challenged, and which ought to be restrained by this Court." ...

539. The conclusion which I draw from the authorities is that it is necessary to distinguish between the exercise of the public right of navigation, which includes a reasonable right to stop and moor temporarily, and obstruction of the river. If there is a permanent and material interference with navigation on the river, that amounts to obstruction and a public nuisance...

541. Counsel for the Claimants also argued that it was a question of fact as to whether there was an obstruction amounting to a public nuisance, relying on *Attorney-General v Burridge* (1822) 147 ER 335 and *Crown v Fairlie*. That I accept. He went on to argue that, in order to establish this, it was necessary for APL to adduce evidence that the boats and pontoons were obstructing the river, such as complaints by other river users. He pointed out that there was no such evidence before the court, and therefore submitted that nuisance was not established...by no stretch of the English language could the extent to which the installation encroaches on the river be described as "trifling". It is manifest from inspection that the installation prevents navigation both across the river and along the river over the area which it occupies. No further evidence is required...

542. I therefore conclude that the permanent mooring of the Claimants' boats and pontoons at Albion Wharf constitutes a public nuisance..."

21. Beatson, L.J. also observed in *Akerman's* case (above) at [27]:
"27...Potentially, permanent mooring of boats such as the appellant's which obstruct free access from the riparian land to the river constitutes both a private and a public nuisance: see *Couper's* case at [525] ff. Similarly, in *Moor v. British Waterways Board* [2013] EWCA Civ. 73, [2013] Ch. 488 it was held that even a riparian owner who was not the owner of a navigable riverbed, did not at common law have a positive right to moor a vessel alongside his land permanently."
22. The headnote in *Original Hartlepool Collieries Company v Gibb* (1877) 5 Ch.D. 713 records the following:

“A navigable river is a public highway, navigable by all Her Majesty’s subjects in a reasonable manner and for a reasonable purpose. Accordingly a riparian owner has a right to moor a vessel of ordinary size alongside his wharf for the purpose of loading or unloading, at reasonable times and for a reasonable time; and the Court will restrain by injunction the owner of adjoining premises from interfering with the access of such vessel, even though the vessel may overlap his own premises; though such vessel would not be allowed to interfere with the proper right of access to the neighbouring premises if used as a wharf, nor to the free entrance to or exit from such premises, if used as a dock, by other vessels.”!

23. In that case Jessel, M.R. granted an injunction against Gibb because he had no right to obstruct the river, a public highway, by deliberately mooring timber logs from his wharf so as to impede the claimant from mooring his long coal barge at the adjacent wharf, even if the claimant’s coal barge overlapped Gibb’s. It was, he said, “an illegal obstruction in the public highway” (p.724). He likened it to someone trying to prevent a waggon being parked temporarily on the roadway outside of your house to unload. He stated (at p.722) that such an obstruction would be a nuisance – “a private nuisance to his neighbour, in the nature of a public nuisance”. Gibb’s counterclaim for damages and an injunction based on the law of nuisance was defeated on the evidence, but Jessel, M.R. acknowledged that he would have been entitled to succeed in recovering very small damages if there had been an interference of Gibb’s reasonable access to his own property by the claimant. However, he would not have granted an injunction because the claimant was not asserting it had a right to obstruct Gibb (p.725-6). The obverse is, that if the claimant had asserted it had the right to obstruct Gibb’s wharf, the Master of the Rolls would have granted an injunction.
24. Section 222(1) of the Local Government Act 1972 states:
“222 (1) Where a local authority considers 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...”
25. A local authority is lawfully entitled to bring an action in trespass and in nuisance; furthermore it is entitled to do so notwithstanding that an alleged trespass may be connected with, or a prelude to, unlawful activity which falls under the jurisdiction of a different authority – see *Cambridge City Council v Traditional Cambridge Tours Limited* [2018] EWHC 1304 (QB) Whipple, J. (as she then was) at [54].
26. There are dicta in caselaw which urge caution in connection with courts imposing civil injunctions where Parliament has enacted legislation providing adequate criminal penalties and where disobedience of an injunction may involve far more onerous sanctions for breach. For example, Lord Roskill in *Stoke on Trent City Council v B&Q (Retail) Ltd* [1984] AC 754 at 776:

“The right to invoke the assistance of the civil court in aid of the criminal law is a comparatively modern development. Where Parliament imposes a penalty for an offence, Parliament must consider the penalty is adequate and Parliament can increase the penalty if it proves to be inadequate. It follows that a local authority should be reluctant to seek and the court should be reluctant to grant an injunction which if disobeyed may involve the infringer in sanctions far more onerous than the penalty imposed for the offence.”

27. I do not consider that there is a difference of principle regarding the exercise of caution before granting a civil injunction between, on the one hand, Parliament having enacted criminal legislation and, on the other hand, a local authority bringing in byelaws which create penalties in a magistrates’ court.
28. It is notable that the claimant has never prosecuted the defendant pursuant to Byelaw 4 of its Byelaws Relating to Mooring 2015 as far as I am aware. This may well be because it was concerned whether there was sufficient evidence to establish that the defendant had moored Kupe to the claimant’s land.
29. In any event it must always be a matter of judgment for a court to decide whether alleged infringements which could have been prosecuted have reached a level of frequency or severity that injunctive relief should be granted. An example of the granting of injunctive relief may be found in *Royal Borough of Kingston v Salzer and others* [2022] EWHC 3081 (KB) at [39], where a defendant had had notices served on him for a very long period of time and where the claimant had displayed clear signs about time-limited free mooring throughout. The judge concluded, at [56 & 57], that given the long history of overstaying and in circumstances where the Council sought an injunction as a remedy of last resort to protect its rights against trespass, it was an entirely proper exercise of discretion to grant a final injunction where damages would not be an adequate remedy or be likely to be an effective means of deterring future non-compliance.
30. Where a vessel is someone’s home then Article 8 of the European Convention on Human Rights may be engaged, however, as Beatson, L.J. said in the *Akerman* case:
“43. The authorities show that a trespasser will only be able to trump the rights of an owner or property by invoking article 8 in an exceptional case: see *Manchester City Council v Pinnock*, [2010] UKSC 45, [2011] 2 AC 6, and *London Borough of Hounslow v Powell* [2011] UKSC 8, [2011] 2 AC 186 and the summary by Etherton LJ, as he then was, in *Thurrock BC v West* [2012] EWCA Civ. 1435 at [22] - [31]. This is particularly so where the owner is a public authority which holds the land for the general public good such as the respondent in this case.”
31. As for the attachment of a power of arrest to an injunction, section 27 of the Police and Justice Act 2006 states:
“(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (power of local authority to bring, defend

or appear in proceedings for the promotion or protection of the interests of inhabitants of their area).

(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.

(3) 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.”

The claimant’s case and evidence

32. The Particulars of Claim are pleaded principally on the basis of trespass, but they also assert the following: that the defendant’s vessels are moored in breach of the claimant’s byelaws; he has remained in breach of notice served upon him; his behaviour has been anti-social; and, although very poorly drafted, they do nonetheless adequately allege (in paragraph 16) that all of this pleaded behaviour involved Mr Trotman continuing to cause a nuisance, which requires an injunction to restrain him.
33. The claimant’s evidence made much play of the fact that Kupe was frequently in contact with whips, saplings and branches growing from tree roots embedded in (and forming part of) its riverbank. The argument presented by Mr Hoar, counsel for the claimant, was that this growth formed part of the riparian land of the local authority, notwithstanding that it was overhanging the River Thames at the points where Kupe came into contact with it. Thus, it was said, Mr Trotman was responsible for trespass to its property and should be prohibited from such contact by a permanent injunction. It is to be noted that the interim injunction was more specific about the overhanging trees in paragraph 2a (wrongly described as a mandatory injunction) by stipulating that the defendant should be prohibited from mooring, trespassing or attaching to the land by ropes to overhanging trees.
34. There is ample photographic evidence of the side of the defendant’s houseboat being in contact with these overhanging tree saplings. This has not put the defendant in breach of the claimant’s byelaws, because he has not been moored to them. There is no evidence of any damage having been caused to the trees.
35. There is one instance where the claimant has provided direct evidence of Kupe being physically attached to its land. This was at 12:36 on 4 April 2023 where there is photographic evidence of a rope hitched around a wooden post on Kupe, with the other end of the rope attached with a bowline knot to a chain fixed around a tree on the riverbank. Mr Almond’s evidence was clear that all observations undertaken of Kupe by or on behalf of the claimant lasted for more than the 1 hour permitted for mooring

at that location. There is no evidence as to who attached Kupe to the tree on that occasion.

36. The claimant's case as to the defendant's behaviour being anti-social was in the main based upon the assertion that those who have been residents on, or visitors to, Kupe have attracted some littering of the riverbank and smoked cannabis there.

The defendant's case and evidence

37. Mr Trotman admits that he was the sole shareholder and Director of the company which owned Kupe. He was the Master of Kupe and he asserts that he has consistently complied with the law as regards its navigation.
38. He was entitled to 'go' in Kupe where he did on the Thames and he was entitled to 'be' there (s.79(1) of the Thames Conservancy Act 1932). He paid his dues to the Environment Agency as they required of him. Further, as part of his rights to navigate this pleasure craft on the Thames under s.79(2), he exercised his rights to 'anchor' and to 'remain' for a reasonable time. It would be for the Environment Agency to take action against him if he were not compliant with the 1932 Act.
39. He had exercised these navigation rights from late January 2023 in the general vicinity of Ham Lands (opposite Burnell Avenue, Ham, Richmond), but he did so at a modest distance away from the claimant's riverbank so as not to moor Kupe. Instead, he secured the position of Kupe by means of fore and aft anchor ropes, together with up to 14 scaffold poles secured to the side of Kupe and sunk into the Environment Agency's riverbed.
40. In order to go ashore from time to time, he (and other occupants who resided on Kupe), would step off onto the claimant's riverbank using a cantilevered gangplank constructed from an aluminium ladder and wooden plank, the outer end of which was held up (like a suspension bridge) by the use of blue nylon ropes under tension attached to a higher point on the vessel. The gangplank was not attached in any way to the riverbank because it would have been foolish and dangerous to do so. The other method adopted for a period of time to go ashore involved stepping across to the land from a ladder which had been placed at an angle so that its upper end was against the vessel's gunwale with its lower end seated on the riverbed somewhere near the bottom of the bank.
41. Quite apart from his rights under section 79 of the 1932 Act, he and the other occupants of Kupe were entitled at reasonable times and for a reasonable period to step onto the land as persons who had the right to use common land with rights of way, including the use of the tow path. This included the right to use a bicycle and to load and unload, even if Kupe was parallel with the claimant's land. This, he says, is entirely consistent with the principles enunciated by Jessel, M.R. in *Original Hartlepool Collieries Company v Gibb* (above) because the claimant should not be granted an injunction to prevent his reasonable use in exactly the same way as Gibb was not entitled to an injunction to prevent the claimant colliery company in that case from overlapping Gibb's wharf when Gibb was not using it.
42. I put to Mr Trotman the proposition that it might be argued that he is rather more in the position of Mr Gibb in that case than the London Borough of Richmond, because Kupe (together with its anchor ropes running upstream and downstream from it) adjacent to

the claimant's land was obstructing access to the bank for others who may wish or need to use it (and in any event he is not the owner of an adjacent part of the riverbank). Mr Trotman rejected that proposition, arguing that there was abundant space for others to use the claimant's bank notwithstanding Kupe's location. He described his vessel as being positively advantageous to other users of the river because they could moor alongside him without having to concern themselves about complying with the claimant's mooring byelaws. Further, when he was onboard he would be able to assist other users of the river. He remained resolute that he had the right to put Kupe where he had and in the manner he had.

43. As for the photographic evidence of Kupe being moored to a tree by rope and chain on 4 April 2023 Mr Trotman said under cross-examination that the chain was there 24/7 for a period of weeks. He said that if he needed to attach Kupe to it he would do so for up to an hour. Initially his account was that he believed he was out of the country on 4 April, but having then checked his diary he said he was in court on that day and there were ten people on that boat. He denied that he had attached Kupe to the tree that day or asked another to do so. In fact he claimed that he had given instructions to people not to moor for more than 1 hour and said it was for the claimant to prove otherwise. He denied that he was lying about having given such instructions.
44. He denied that any of the other photographic evidence provided by the claimant reveals that the vessel was attached to anything on the claimant's land at all. The suggestion made by Mr Hoar that the end of a blue nylon rope holding up the end of the gangplank was on one occasion looped around a tree stump was forcefully rejected by Mr Trotman. Not only because the photographs do not establish any such thing (it is simply the end of a rope hanging down), but also because it would be utterly foolish and unsafe for anyone to have attached it as suggested.
45. Mr Trotman accepts that Kupe would often be in contact with tree branches up against its side, but these were branches which the claimant had wrongfully allowed to grow up and overhang the River Thames. He argued that they should have been removed by the claimant and/or the Environment Agency pursuant to sections 104 and 105 of the Thames Conservancy Act 1932. Since there was a tow path there, he asked rhetorically how a boat could possibly be towed, as it should have been able to, with all this uncontrolled growth. He argued that these branches were not on the claimant's land at the point of contact and, taking the definition of 'land' in the claimant's own Byelaw 1, they were not a part of the land, there defined as land abutting the River Thames which includes banks, walls and embankments. Therefore, he contested the claimant's submission that by Kupe coming into contact with these branches whilst it was anchored off the riverbank he had thereby 'moored' to their land or trespassed on their land.
46. Mr Trotman did not accept that there is any other photographic evidence showing a part of Kupe or any of its equipment touching the claimant's land, in particular the gangplank. If there is some minor damage to the overgrown coppiced whips or tree stumps he commented that it would no doubt have occurred from momentary contact during strong currents within unparticularised 1 hour periods.
47. As for the use of a ladder to help step onto the bank, he makes the point that Mr Almond did not at any stage check on the location of the foot of the ladder below water level to see if it was thereby in some way potentially trespassing on the claimant's land.

48. Mr Trotman is vociferous in submitting that there are no proper grounds under section 27 of the Police and Justice Act 2006 to attach a power of arrest to any injunction against him. He says that any injunction which I might be considering ordering against him would not involve prohibiting conduct which is capable of causing nuisance or annoyance to any person (s.27(2)) and therefore the court may not attach a power of arrest. Furthermore, he argues that on the evidence (which is that of Mr Almond) I could not conclude that the conduct which I may be considering prohibiting consists of or includes Mr Trotman's use, or threatened use, of violence; nor could I conclude that there is a significant risk of harm (including serious ill-treatment or abuse) to the person who I may be considering he is to be prohibited from conducting himself towards.
49. In considering Mr Trotman's case overall I was put in mind of arguments which have been successfully advanced in the field of tax avoidance. Essentially they are these: if he happens to have found a way of strictly complying with the letter of the law which at the same time enables him to enjoy an advantage (economic or otherwise) which has frustrated the claimant's objectives then it is legally improper for the claimant and the courts to twist the law so as to seek to ensnare him.

My conclusions

50. Mr Trotman has made completely misconceived submissions that evidence cannot be given in this court of alleged breaches of Byelaw 4 unless they have been elicited under the provisions of section 11 of the Civil Evidence Act 1968 following conviction in the magistrates' court. That is quite simply wrong. However, in my view there is precious little evidence of him having breached Byelaw 4 and he has not been prosecuted in respect of any alleged breaches.
51. With some diffidence I have not come to the same conclusions on the evidence as to trespass as was reached by Lambert, J. when she granted an interim injunction in this case. I do not accept that on a balance of probabilities the claimant has established, as it asserts, that Kupe has been moored in contravention of its byelaws for a period of several months. I am not satisfied that the gangplank was a physical attachment between the vessel and the riverbank. Therefore, notwithstanding the decision made in July granting an interim injunction on the basis of Mr Almond's first witness statement and exhibits, having now heard the evidence given on oath and tested under cross-examination over the course of a long court day, on the balance of probabilities I do not find that there has been any significant trespass by Mr Trotman to the claimant's land, especially as regards his navigation of Kupe in the vicinity of the claimant's land. The claimant's argument about Kupe being in contact with overhanging trees is something of a contrivance to try to overcome the fact that he has not moored to the council's land and to try to found a tenuous basis for a cause of action in trespass. Certainly there has not been the extent or degree of trespass which to my mind could possibly justify granting a final injunction against Mr Trotman on the basis of the law of trespass.
52. In paragraph 15 of the judgment of Lambert, J. in granting an interim injunction she made a finding on the basis of an examination of the written evidence that the defendant's actions were affecting the ability of other river users to moor their boats on that stretch of the Thames in accordance with the byelaws. With that I am in complete agreement. She had said in paragraph 11 of her judgment that the claim is also brought in nuisance but said that it was not necessary for her to consider that cause of action.

Given her assessment of the evidence of trespass that was certainly the case, however, it is now necessary for me to consider that alternative cause of action.

53. I find as a fact that Kupe and its anchor ropes presented an unreasonable obstruction to those other users of the river who may have wished or needed to access the claimant's land when, for a period of more than 6 months, it was anchored by the defendant at a distance of no more than 3 metres from the riverbank.
54. I find that in so doing, the defendant was committing a public nuisance by obstructing the riverbank for a considerable length (see *Couper's* case, above). This was no trifling interference. Canoes, rowing boats, any person finding themselves in the water, motor boats, rafts, barges, sailing dinghies, etc. in the vicinity of where Kupe was anchored were thus prevented from reaching the riverbank so as to enjoy the limited rights afforded to them by the claimant.
55. In my view the claimant, as owner of the riverbank, has the necessary legal standing to bring proceedings in its own name for the protection of the interests of the inhabitants of its area in a claim for an injunction to prevent a public nuisance, pursuant to section 222 of the Local Government Act 1972.
56. Mr Trotman was absolutely clear in his submissions that he had the right to position Kupe where he did. By claiming that he has a right to do what I have found to have amounted to a public nuisance, my conclusion is that that does entitle the claimant to an injunction to prevent the defendant from doing so in the future with any vessel.
57. Mr Trotman has not pleaded or particularised an Article 8 ECHR defence. That would have had to be done in order to meet the high threshold required to make it seriously arguable: *London Borough of Hounslow v Powell* at [33] and [34] per Lord Hope. There was no evidence that he was precluded from residing on Kupe by locating it elsewhere and in a manner which complied with the claimant's Byelaws Relating to Mooring.
58. The draft wording of the final injunction sought by the claimant, even in its amended version, remains opaque. The injunction I shall grant will be in the form set out below.
59. As for the application for a power of arrest, there is no basis whatsoever on the evidence before me to attach such a power to this injunction. The claimant has not shown that there has been the use of, or threatened use of, violence and there can be no risk of harm to the person of the council (s.27(3) Police and Justice Act 2006).
60. Having succeeded in its claim the claimant is entitled to its costs on the standard basis. I summarily assess those in the sum of £27,500 to ensure it is proportionate to the claim by reducing the sum claimed in respect of the solicitors' costs by approximately 10% (£2,996).

Injunction

61. The defendant shall be prohibited, whether by himself or by inciting or encouraging any other person, from bringing, mooring or leaving on the River Thames any vessel whereby any part of it comes within 3 metres of a riverbank in the London Borough of Richmond-upon-Thames owned by the London Borough of Richmond-upon-Thames

Council, unless it be so as to moor in compliance with the London Borough of Richmond-upon-Thames' Byelaws Relating to Mooring of 2015 (and any amendments thereto or replacements thereof). This injunction will remain in force indefinitely, unless varied by order of this court.

62. The service of this injunction will be permitted by an alternative method (insofar as it is necessary) by posting it to the Defendant's mailbox or sending it his email address, pursuant to CPR 6.15(1).